SENATE—*Friday, October 4, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 8:45 a.m., on the expiration of the recess, and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

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

Let us pray:

** * * For there is no power but of God: the powers that be are ordained of God. * * * For rulers are not a terror to good works, but to evil. * * * For he is the minister of God * * * for good. * * **—Romans 13:1, 3-4.

Almighty God, Ruler of the nations, our Founding Fathers wisely determined that government should be impartial toward religious establishments, but they were not partial to irreligion. They were not without religious beliefs. Their words and letters and their issues reflect profound faith. Their thinking was informed by—saturated with Biblical truth. They took prayer seriously during the dangerous struggles of the revolution and the painful designing of a political system unprecedented in human history. Their God was not a partisan God of one religious group or another but the God of creation.

Patient Lord, though the U.S. Senate must be impartial to religious groups, Senators are not, therefore, required to be without faith and its convictions. Help each Senator to understand that his authority is ordained by God and he is, therefore, accountable to You, as well as to the people, as to the disposition of senatorial responsibility.

In His name who was infinite in His love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 4, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. 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.

The Senator from New Jersey [Mr. BRADLEY] is permitted to speak for up to 30 minutes. The Senator from New Jersey.

CLARENCE THOMAS

Mr. BRADLEY. Mr. President, a friend of mine, Clifford Alexander, told me that one day in 1967 President Lyndon Johnson summoned him to the Oval Office. When he arrived, LBJ told this 33-year-old, African-American, White House staff member that he had decided to appoint Thurgood Marshall to the Supreme Court. LBJ asked him to sit down while he made some calls.

The President called Vice President Hubert Humphrey. He called James Eastland of Mississippi, a plantation owner and the chairman of the Senate Judiciary Committee. He called A. Phillip Randolph of New York, visionary of the march on Washington. He called Roy Wilkins of the NAACP. He called Senators Everett Dirksen of Illinois, John McClellan of Arkansas, Sam Ervin of North Carolina.

The President told these men that Thurgood Marshall was an extremely talented man, that he was a well-known Federal appeals court judge, that he had won 14 of 19 Supreme Court cases when he was Solicitor General of the United States, that he had won 29 of 32 Supreme Court cases when he was general counsel of the NAACP, that he had successfully argued Brown versus Board of Education before a distinguished Supreme Court consisting of two former Senators, a distinguished law school professor, a former U.S. attorney general, a former State supreme court justice, and a former Governor.

He told them the times were changing, that America needed tolerance, that the days of discrimination should end, and that Marshall's appointment would signal hope to a generation of black Americans and progress to a generation of white Americans. He told them that Marshall rode the crest of a moral wave led by the courageous actions of an oppressed people, that Congress did change laws and courts did interpret those laws but that ultimately the biggest change had to be in peoples' hearts. He told them that by supporting Marshall people could demonstrate a change in their own hearts—a greater sense of generosity, understanding and a belief that racial barriers would continue to fall.

Johnson knew that Marshall's legal ability and individual character were equal to those Justices who sat on the Brown versus Board court, but he also knew that confirmation could be difficult. He knew that the political stakes were high and that when it came to race, someone in American politics usually shouted the equivalent of "fire" in a crowded theater, even if there was no fire.

LBJ's motivation was above politics; his method was tenacious; his obligation was to a better American future.

In 1991, President George Bush nominated Clarence Thomas to the bench. He held a press conference and denied that race was even a factor in his decision. He mounted no campaign, made no major speech, and rallied no group of Americans. The President uttered only the "non sequitur" that "Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court." Virtually the only reason that George Bush gave in selecting Thomas was that he was "the best person for this position."

Perhaps what the President meant to say was that Thomas is the best person for President Bush's political agenda. After all, he is the President who has been uniquely insensitive to black America, who has exploited racial division to attract votes more than once in his career, and who has asserted on countless occasions that in his America, sensitivity to equal opportunity for women and minorities will play no role in education or job placements. His tactical use of Clarence Thomas, as with Willie Horton, depends for its effectiveness on the limited ability of all races to see beyond color and as such, is a stunning example of political opportunism.

Many subtle and not so subtle messages are contained in Mr. Bush's nomination of Judge Thomas—messages that blur the meaning of a vote for or against Thomas. The messages say that Clarence Thomas did not need government intervention, so why should help be extended to others; that

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

white America has no responsibility for the failure of blacks; that tokenism is the only acceptable form of affirmative action; that racism did not hold back Judge Thomas—why are other blacks always whining about its effect on their lives; that an administration that nominates a black for the Supreme Court has answered the critics of its racial policies.

Mr. President, I have struggled with the President's words that Clarence Thomas is "the best person for the position." I thought about the 700,000 lawyers in America; I thought about the 10,000 judges; I thought about the 5,000 law professors; I thought about the 875 black judges and the 200 black law professors. I thought about the ABA's rating of Clarence Thomas. I concluded: To be truthful, I must disagree with the President.

But then, Clarence Thomas is as well qualified as some who now serve on the Supreme Court, and as a young man he still has room to grow—so why not give the President his man? After all, Judge Thomas has said in his confirmation hearings that he would be an impartial judge.

But the skill of a judge is not some mechanical, computer-like, balancing act. Since the Supreme Court dispenses justice, what goes into one's conception of a just society will have an influence on decisions. So will one's reading of American history with its tensions between liberty and obligation; freedom and order; exclusion and participation; the dominant culture and countless subcultures, and the individual and the community. Where a judge places himself in our historical narrative depends on how thoroughly he learns our past, how he reads his times, how well he knows himself, and how clearly he thinks about his values.

Clarence Thomas has opposed the use of Government as a remedy for anything other than individual acts of discrimination against women and minorities, never mind that the poor cannot afford a lawyer. He has asserted that natural law can be applied to cases involving the right to privacy. He has said that natural law or a higher law "provides the only firm basis for a just and wise constitutional decision." In other words, one could invoke higher law to justify virtually any position. He has said, "Economic rights are protected as much as any other rights," thus putting economic rights on equal footing with the right to speak your mind freely, or practice your religious faith, or live your life free of unnecessary government intrusion into your private affairs.

Clarence Thomas took these positions in articles and speeches over a decade of right wing political activism. For over 10 years he was one of the right wing's star mouthpieces. For over 10 years, he was forceful and he was an advocate. Then in less than 10 days before the Judiciary Committee he backtracked or denied many of his past views.

He said that these statements of political philosophy were made when he was an executive branch politician and that they would not enter into his work as a Justice. In fact, by denying much of what he had long espoused, he implied that, rather than the very fiber of his existence, his political philosophy is like a set of clothes that you can change depending on the impression you want to create.

His chameleon-like behavior before the committee poses real dilemmas in considering his nomination. He presented himself to the committee, just as President Bush introduced him to the public, by highlighting the personal. He chose to emphasize not his reading of the law or his political philosophy, not his public record, but rather his politically attractive personal journey. When questioned, he constantly referred back to the personal, as if he were a modern candidate repeating his sound bite.

When one hears his story of growing up in Pinpoint, GA, a possible reaction is the one the President had after he listened with others to Thomas' opening statement: "I don't think there was a dry eye in the house," he said.

The great African American novelist Richard Wright, in writing about his great book, "Native Son," gives another view of such tears, "I found I had written a book that even the banker's daughter could read and weep over and feel good about. I swore to myself that if I ever wrote another book no one would weep over it; that it would be so hard and deep that they would have to face it without the consolation of tears."

Today, 50 years after Wright penned those words, America cannot afford to sentimentalize black life. Significant parts of the African American community are being devastated and are self-destructing daily. Instead, we must take Wright's "hard and deep" look. To hear Clarence Thomas' story as one of soley individual achievement is a dangerous mistake. I do not diminish his personal achievement or discipline. I admire it. But how he chose to share his story leaves out a lot.

On one level, it is a story of overcoming odds, of hard work, tremendous dedication and self-reliance. But it is also a more complex story of an authoritarian grandfather, women who sacrificed themselves for the man of the family, a dedicated group of nuns who gave guidance with inspiration, luck—"someone always came along"—historical change—civil rights movement—and attempts by Holy Cross and Yale at specific remedies to discrimination—affirmative action. Clarence Thomas' philosophy of the 1980's implied that only self-help was necessary, but his own life experience refutes that view. Self-help is necessary, but it is far from sufficient.

Clarence Thomas' self-help story does not ring true for those not lucky enough to get even the small breaks. But the conservatives love it. Who needs the state at any time in life if all of us can make it on our own? Who needs Social Security or college assistance or health care for the poor if everyone can make it on his own? Beneath the exclusive espousal of self-help is the bottom line of "I got mine, you get yours."

Personally, I believe through self-reliance, discipline, and determination a person can overcome virtually any obstacle—achieve any goal. But I also can imagine forces beyond your control—health, violent disaster, sudden economic trauma—that overwhelm your prospects.

Today, while conservatives preach the sufficiency of self-help, urban schools become warehouses rather than places to learn, black infant mortality rates and black unemployment rates skyrocket, and a generation is being lost to violence in the streets. Self-help is an important, individual conduct. And initiative deserves its rewards, but the need for equal opportunity in economic, educational, and political matters as well as real progress against poverty and crime require a role for the State.

Above all, those who win and climb up the ladder must never forget where they came from or mock the old culture or those who fell behind. Take Clarence Thomas' story of his sister. He said, "She gets mad when the mailman is late with her welfare check. That is how dependent she is." Put candidly, Clarence Thomas seized on the welfare queen stereotype, even if it exaggerated the facts and even if it was his sister, in order to score conservative points. On one level, the event represents unfairness to a loved one, and on another, insensitivity to women generally. Is it any wonder that he says he has never discussed Roe v. Wade?

As I watched the confirmation process, I became profoundly saddened by the process itself and by what it did to Clarence Thomas.

People who have known Clarence Thomas since his college days agree that one thing. One thing stands out about him. No, not Pin Point, GA—there are Pin Point, GA, stories in the lives of millions of Americans, both black and white, who have struggled against the odds, against discrimination, against the deck being stacked by the majority culture or their economic superiors. No, the thing that separated Clarence Thomas from other people and marked his individuality was his point of view. He wore it like a badge—until he backtracked during the confirmation process. In doing what he perceived to be or was told to be necessary to attain one of the most impor-

tant positions our country offers, he allowed himself to be manipulated into the ultimate indignity—being stripped of his point of view. The circle that began in Pin Point closed. In the beginning his individuality was denied due to color. Today his individuality is denied due to a calculated refusal to assert those views that gave his identity its boldest definition in the first place.

Clarence Thomas may be a good friend with a great sense of humor and someone of high moral character. One can be all that and still not be a person that you would want structuring the legal framework for our children's future.

For those like me who find his record troubling, his performance before the Judiciary Committee puzzling, and his life experience potentially an important influence on the present court, his nomination poses a fundamental question. Does one make the judgment on the basis of his individuality or his race? Does one vote against him because of his record or for him because, as Maya Angelou has said, "he has been poor, has been nearly suffocated by the acrid odor of racial discrimination, is intelligent, well trained, black and young enough to be won over again."

Mr. President, I believe that individuality is more determinative than race. I believe Clarence Thomas' political philosophy, his public record, his overall professional experience, and his choice of what to show and what to hide in the committee hearing process present obstacles to his confirmation.

Given the heightened and proper sensitivity to blackness in the last 25 years in America, one asks, is there something latent in Thomas' being that would blossom if he had a lifetime tenure? Would his rigidity, reactionary views, and intolerance be replaced by a more flexible, balanced perspective?

Some people argue that Thomas is a wild card who might just bite the hand of those who have advanced and promoted him for his conservative views. Blackness, they say, will prevail over individuality. By blackness they presume a set of experiences that lead to views, not necessarily liberal, but different from Thomas' stated positions. But what is that essence, blackness? A common sharing of the experience of oppression? A common network of support to nurture the spirit, mind, and body under assault? A common determination to add to the mosaic of America that which is uniquely African American? A common aspiration that all black Americans can live with dignity free from racist attacks, overt discrimination, sly innuendo, and without fundamental distrust of white Americans? Yes, all of these commonalities, and probably many others I have never even thought of, go into blackness, but can we assume that any or all of them will offset Clarence Thomas' political philosophy and his public record—both of which have run against the common currents of black life. To do so would be irrational. It would deny him the individuality—however we might disagree with its expression—which is God's gift to every human being. Qualities of mind and character attach to a person, not to a race.

Clarence Thomas' paradox is real. The individuality that allowed him survival in a world of hostile, dangerous racism is the individuality that seems to make him numb to the meaning of shared experience.

Those who call Clarence Thomas the "hope candidate" do not mean hope in the transcendent terms of "keep hope alive." Instead, they hope those qualities which have characterized his individuality up to this point can be transformed. I doubt that is possible. I doubt that he can "be won over again." Therefore, it is on the basis of his individuality, as I have been allowed to know it from his public record, his professional work, and his confirmation process, that I will cast my vote against Judge Thomas.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SEAN CONNOLLY—ALL-STAR CATCHER FROM EAST SANDWICH, MASSACHUSETTS

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to call the attention of the Senate to the special achievements of an outstanding young athlete from East Sandwich, Massachusetts. Sean Connolly, a 17-year-old senior at Sandwich High School on Cape Cod, has become one of the most promising young baseball players in the country.

This past August, Sean participated in the Senior Babe Ruth World Series in Falmouth, Massachusetts. As a result of his performance, he was chosen for the all-defensive world series team, and won the Mizuno Golden Glove Award as the best defensive catcher on the nine U.S. regional teams in the series.

Sean has numerous other accomplishments in his baseball career. He was named an All-South Shore League all-star catcher in his sophomore year.

In addition to leading the Sandwich High School team to the No. 1 ranking in eastern Massachusetts this year and leading his team in RBI's, he was also selected for the Cape Cod Times 1991 All-Scholastic Baseball Team.

This high level of excellence makes Sean a fine example for other young Americans. I commend him for his outstanding achievements, and I wish him continued success in the years ahead.

Move over, Tony Pena—get ready, Fenway Park.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

The PRESIDING OFFICER. The time between 9:15 a.m. and 10 a.m., under the previous order, is under the control of the majority leader or his designee.

Mr. SARBANES. I thank the Chair.

THE UNEMPLOYMENT ISSUE

Mr. SARBANES. Mr. President, I want to address the unemployment issue just very briefly here this morning. Very shortly we will be holding a hearing of the Joint Economic Committee to receive the latest monthly unemployment figures from Commissioner Norwood of the Bureau of Labor Statistics which were announced a half hour ago at 6.7 percent. It was 6.8 percent the previous month. So there is a change of a tenth of a percent. But I want to try to put that in some perspective, particularly as we address the payment of unemployment insurance benefits to the long-term unemployed, a measure about which of course the Congress and the President have been in disagreement.

Mr. President, there is little convincing evidence that we have emerged from the recession, and I think it is very important to keep that in mind. What I really want to talk about today is the plight of the long-term unemployed across the country and the necessity to address the human situation in which they find themselves and not to be caught up in the statistics.

Mr. Darman, the Director of OMB, last weekend, on a TV show really downplayed the seriousness of the economic situation in which we find ourselves. He contended that the recession was over. That is consistent with the siren song that he has been singing all along, that this is a short and shallow recession. Of course, nothing is further from the case.

This recession has been longer than any postwar recession with the exception of the recession in 1974–75 and the recession in 1981–82, which was the worst recession since the Great Depression. Other than those two recessions, which ran for 16 months, this recession—which is now going into its 14th month—is the longest that we have had in the postwar period.

In August the President had an opportunity to help the long-term unemployed by declaring an emergency and signing legislation sent to him by the Congress at that time. If he had done so, benefits would have started to flow to the long-term unemployed.

The unemployment system is constructed of 26 weeks of basic benefits and then extended benefits, and there is a trust fund that is set up into which money is paid for the purpose of paying these extended benefits. In fact employers pay a tax specifically for the purpose of paying extended benefits.

So one of the issues here is really the integrity of this unemployment trust fund. The system was premised on building up a surplus when unemployment was low in order to have a balance in the trust fund with which to pay benefits when unemployment rose. The extended benefits trust fund now has a balance of over $8 billion. The balance, Mr. President, is increasing over the course of this year. The additional taxes that will be paid in by employers are paid in for the purpose of paying extended benefits. That is why the taxes are levied. That is the representation that is given to the employer for the payment of these taxes. Between the money paid in, which will be about $700 million, and the interest earned on the existing balance, which will be about the same, you add about $1.3 to $1.4 billion to the fund. It is estimated it will pay out less than $200 million on the present payment system, so this fund will build another $1.2 billion in additional surplus in the course of this fiscal year. The balance now is at $8 billion. It is projected to reach almost $10 billion in 1992.

But the benefits are being paid. This chart shows the number of persons receiving extended unemployment insurance benefits. There was a large increase in 1974–75 when we had the recession. Many more people got benefits, which is exactly what is supposed to happen. In 1980 it went up. In 1981–82, when you had the Reagan recession, the figure jumped again.

Look what has happened this time. Hardly anyone is receiving extended benefits. Fourteen thousand people nationwide. You have 1.3 million people who have been out of work for more than 26 weeks. In other words, they would have exhausted their benefits. You have about the same number who have been out of work 15 to 26 weeks. In other words, they are approaching exhausting their benefits. That is about 2½ million people across the country who are feeling tremendous personal strain and stress.

I know that Mr. Darman and others will say that the unemployment rate ticked down a tenth of a point.

This shows that things are on the move. I think the indicators are very mixed. The most recent data on the economy does not provide any really conclusive evidence that would lead one to think that this recession is over. When the President did not declare the emergency back in August, at that time, the Commerce Department had reported an increase in the GNP for the second quarter of 1991. That is reflected on this chart, which shows that the gross national product had grown in the second quarter of 1991.

Since then, the Commerce Department has revised those figures on the basis of additional, more definitive information, to show now that in the second quarter of 1991, instead of the real GNP growing by four-tenths of a percent—which is not much growth—they showed a positive growth of four-tenths of a percent. Now they show, on the basis of more definitive figures a drop in GNP of five-tenths of 1 percent. This makes three consecutive quarters of a drop in GNP. True, it did not drop as much as in the previous quarters, but nevertheless, it is still negative.

We have reports from around the country of housing starts, which were up, and building permits, which have been rising since January. The rise stopped in August. Retail sales, which went up a little bit in June and July, fell in August. The leading indicators failed to rise in August, after they had risen in the previous 6 months, and the increase in these indicators is significantly less than the increase in previous recession periods.

The one-tenth of a point drop in the unemployment rate is apparently mostly due to the increase in people working part time, because they could not find full-time jobs. Consumer confidence is down. The Conference Board Index of Consumer Confidence fell 4.5 percent in September, nonresidential construction fell and so forth and so on.

So these indices do not show a strong movement out of the recession, and many of us think that we confront the possibility of experiencing a double-dip recession in this country. The important issue right now on the national agenda is this unemployment insurance benefit bill. I very much hope that the President will find it in his heart to sign this legislation. I want to detail very briefly, before I go to chair the hearing and hear from Commissioner Norwood the reasons for that.

First, and most important, there is tremendous human suffering across the country on the part of those who have lost their jobs, have exhausted their benefits, and now find themselves at wits end on how to meet their bills.

Mr. President, by definition, one cannot draw unemployment insurance benefits unless one has continuously held a job. So we are talking about working people, employed people, people who had a job and who lost that job through no fault of their own, because if you lose your job through your own fault, you cannot draw unemployment benefits.

So these are the people who have really built the country. We are talking about the people who have worked, who have been productive, and the economy has gone sour, and they are now out of work. American Express announced just yesterday that they are going to lay off 1,700 people. The Governor of Maryland has just sent out termination slips to almost 2,000 employees in the State of Maryland because of the budget constraints which the State confronts.

The system was constructed to give 26 weeks of basic benefits, and that is to carry you through the period of a difficult job market, so that you are then in a position to find work in a job market which is improving.

The fact of the matter is that people who lost their jobs last November, when the unemployment rate was 5.9 percent; or in December, when it was 6.1; or in January, when it was 6.2, by now will have used up their basic 26 weeks of benefits. They will be without benefits, and they will be trying to find employment in a job market where the unemployment rate is 6.7 percent. So they will now be looking for a job with no benefits in a job market which is significantly worse than the job market at the time that they lost their job.

The benefits are designed to help people move through that period, so that they find themselves in a rising job market with an opportunity to find employment and go back to work and to support their families. In previous recessions—and there is no reason to believe this one will be any different—the number of long-term unemployed has gone up after the recession is over for a number of months. So this problem of paying extended benefits will be with us.

There is enormous human misery across the country. These are responsible, productive citizens, and the President ought to respond to their needs, and he ought to do it now.

Second, the President ought to respond because the system was constructed—to build up surpluses in good times and to spend them in bad. It is a sensible system. These taxes were paid into this trust fund, and this balance was built up. It is an abuse of this system not to pay extended benefits in a recession at a time of need. It really breaks the covenant with the employers and the employees that these taxes were being paid for the specific purpose of paying unemployment benefits.

The President says: We have a budget agreement, and if I do this, I will be enhancing the deficit. Mr. President, the budget agreement provided for the possibility of declaring an emergency and going outside the budget ceilings. The President did that earlier this year in order to send assistance overseas. He

perceived an emergency overseas, which warranted using the emergency provisions of the budget agreement to go outside the ceilings. He refuses to perceive an emergency here at home, even though the trust fund has this large balance in it and is building up an even larger balance, and even though only 14,000 people are receiving extended benefits.

It is not fair; it does not make sense; it runs counter to the logic of the unemployment insurance, which was specifically designed to avoid questions about how to fund the system by building up this trust fund balance. That is exactly what it was intended to do.

Mr. President, I call on the President this morning to help the unemployed across the country—the working people of America who have lost their jobs through no fault of their own, to sign the legislation and to allow the extended benefits to be paid, to maintain the integrity of the extended benefit trust fund, and to bring some hope back into the lives of millions of Americans who now face despair.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this morning, new unemployment figures confirm what the country already knows—this recession is not over. The economy is still in trouble. Workers are still hurting.

Unemployment continues at unacceptable levels, with no significant change—6.7 percent in the Nation, and 9.2 percent in Massachusetts.

The White House was gambling that today's figures would decline substantially and reduce the need for congressional action on unemployment compensation. But now they have lost that shameful gamble, and the strong case for action is even stronger today.

Poverty is also increasing—in 1990, 2.1 million more Americans were left in poverty because of the recession; 40 percent of those in poverty are children.

In State after State across the Nation, working men and women cannot find work. They cannot feed their families or pay the mortgage. Their unemployment benefits are running out, and they need help.

In the face of this new evidence, it is time for President Bush to face up to his own responsibility as President and recognize the harsh reality that so many working families have been facing for so long. The unemployment compensation bill is on its way to the President's desk, and I urge the President to sign it into law.

Earlier this week, before these latest numbers were released, President Bush once again stated that he will veto this measure.

It is clear that the White House has trouble understanding the problems facing ordinary working Americans. In recent days, at a Republican fundraiser, he went so far as to characterize the unemployment bill and other measures heading for his desk as "garbage" he will not sign.

Labeling emergency unemployment benefits as "garbage" may sound good to fatcat Republican campaign contributors. But it is an insult to hundreds of thousands of working Americans who have exhausted their unemployment benefits because of this recession. They need a helping hand from their President, not the back of his hand.

In Massachusetts 3,000 more workers lose their benefits each week, 12,000 per month, up 29 percent over last year. Nationally, the number of people exhausting their benefits is the highest in 40 years, the highest since these records have been kept.

In every previous recession, under Republican and Democrat Presidents alike, we have provided emergency unemployment benefits in circumstances like this. Under President Kennedy, President Nixon, President Ford, and President Reagan, we always helped the unemployed. Why not now? Why is President Bush so far outside the American mainstream on this issue?

If the President carries out his veto threat, then the Senate will vote first to override the veto. The margin is likely to be close—perhaps a single vote.

I urge my colleagues to listen to their constituents, especially those out of work, out of luck, out of hope. They need and deserve help. They need it urgently. And it is wrong for the President to deny it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RIEGLE. 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. RIEGLE. Mr. President, I want to join in the discussion that has been going on about the urgent need for extended unemployment benefits for workers in this country who have lost their jobs and, because of the continuing weak economy, have not been called back to work.

According to the new unemployment data out today, the State of Michigan, my home State, has seen the unemployment level jump very dramatically. It has gone from 9.1 percent, to 9.7 percent. In fact, the number of people in Michigan who lost their jobs in the last 30 days is a larger number than all of the rest of the job increases in the entire country. So this problem is a very serious problem. A year ago, the State of Michigan had unemployment of about 7.3 percent, and a figure of about 332,000 people were out of work at that time. This was a year ago. Now, today, that figure has jumped to 437,000 people.

So this situation is a very, very serious situation, and we need the extended unemployment compensation benefits. In my home State of Michigan, there are 170,000 workers who, having exhausted their regular unemployment benefits, have not been called back to work and would qualify for the extended benefits program if the President will sign that bill. If the President refuses to sign the bill, if he vetoes the bill, those people have no place to turn, because there are no other jobs available in my State of Michigan because the unemployment rate has actually gone up. So those workers who have exhausted their regular unemployment benefits cannot go out and find another job. Their own job has not come back, but there is not some alternative job, some substitute job for them to find because there is such massive unemployment in the State already. So those workers have no place to turn.

For the administration to say that it does not matter, or to characterize the unemployment extension bill that we have passed with an overwhelming vote here in the Senate as "garbage," as they did the other day, is really outrageous. It turns it back on the actual condition facing our unemployed workers and their families in Michigan and throughout the country. These benefits have to be made available to these people so they can hold their lives together.

We are talking about basic things. We are talking about people having enough money to be able to eat, to be able to pay the rent; if they own a home, to be able to make the house payment; if they own a car, to be able to make the car payments. I mean, the last thing in the world we want to do is take working people in this country, who have been working throughout their adult lifetimes and who lose their jobs because the economy is so weak, and then allow a situation to develop where they exhaust all of their unemployment benefits and have their whole lives torn apart.

I saw a man the other day in Michigan who was literally forced to leave his family because of persistent long-term unemployment. He was like a nomad, a vagabond, moving around the State of Michigan. In this case, he had a motorcycle. That was the only way he had to get around the State or to go somewhere else to try to find some work.

When I met him, he was desperate. I met this gentleman at an unemployment office, a place where they try to help workers that are out of work. He was there, and he had with him a little portfolio of certificates that he had earned for excellence in the area of machine tool work. So this was a highly

skilled worker, a person with an excellent work record over a period of time. As he was talking to me, he literally just burst into tears and told me that he was literally down to the point where he only had pocket change left to himself and he did not know what he was going to do next.

That is not uncommon. We have 170,000 people in the State of Michigan alone that need these extended unemployment benefits.

Why are we turning our back on people like that? Why is this administration turning its back on unemployed workers in this country? Why are we saying to those workers that they are less important than people in other countries that this administration is sending money to every single day?

We are helping countries all around the world, countries the names of which are even unfamiliar to people. If we had a globe of the world or a map of the world here right now, if I were to list off all the countries that this administration has asked us to send money to this year, most people could not even find those countries on a map. Why is it that we are sending all that money and putting all that emphasis on people that live in other countries and turning our back on people in this country who desperately need our help?

The other part of it that is just so wrong is the fact that we have collected, over the last few years, in a special national trust fund called the extended unemployment benefits trust fund, money for precisely this purpose, so that when the next serious recession came along, as it now has, there would be money that would have been collected during good times to pay out these extended unemployment benefits to these unemployed workers in bad times.

But what has happened here is the Bush administration does not want to use the money for the purpose that it was collected. They want to take it and be able to credit that amount of money against other spending in the Federal Government that has absolutely nothing to do with unemployed workers. That is what is going on here.

So they actually want to, in effect, in an accounting sense, misappropriate that money and use it somewhere else, count it somewhere else, and then say, "Sorry," to the unemployed workers, "you cannot have the benefits that you need and which were collected precisely to deal with this kind of problem."

In every other recession we have provided extended unemployment compensation benefits. Democratic Presidents have provided them. Republican Presidents have provided them. Why? Because they are needed. Because they are justified. The workers need that help.

Bear in mind, this is no welfare program. We are talking about workers with an established work history who lose their job because of the high unemployment and the serious recession and cannot get a job back. They are not called back to their job and they cannot find another job.

Why do we want to punish those workers and punish their families and punish their children? I will tell you this. I am convinced that if, today, the top officers in our Government in the executive branch, the President, the Vice President, the Cabinet officers, the chief leaders of the Congress—if suddenly the unemployment were to hit this whole crowd and if all of our family members and the President's family members and the Vice President's family members were unemployed and had exhausted their unemployment benefits and needed the extended benefits, how long do you think it would take for this bill to get signed? They would sign it this afternoon. They would get those benefits flowing.

The problem is there is a disconnection, and the disconnection is the people who run our Government today are out of touch and they do not understand what is going on in the lives of everyday people. And they do not show much sign of caring about it, either.

This is an urgent issue. Unemployment in Michigan today has risen to 9.7 percent. Our unemployed workers need this help. The money has been collected for this purpose. The President needs to sign this legislation and respond to the needs of people in this country; not just respond to the people with needs in other countries, but to take a look for a change at what is needed in America.

Let us do something to help this country. Let us concentrate on our workers. Why is it not time to do these things to make America stronger? It is just not right. It is just not right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee [Mr. GORE].

Mr. GORE. Mr. President, today's unemployment figures indicate that the tragedy of unemployment continues unabated in our Nation.

We are in a recovery, we are told. The problem is, Americans do not see any difference between the recovery and the recession. How do we tell the difference? The unemployment rate continues at this very high level. And while the administration has insisted that the current recession is, and I use their words, "short and shallow" the same could be said for their statements and for the President's domestic economic agenda, short and shallow.

He has not see any emergency. He has attempted to govern by veto. And he and his administration have offered nothing in the way of economic security for millions of Americans threatened by policies of neglect.

George Bush campaigned for the White House on the promise that his economic policies would create 30 million new jobs. Maybe we should have asked him to be a little more precise.

He can claim that, yes, his economic policies have created 30 million new jobs. They just have not been here in this country. The growth rate in France has been 6 times higher than in the United States. Economic growth in Germany has been 12 times higher than in the United States.

Not to be outdone, Japan has had an economic growth rate 16 times faster than the one here in the United States.

So, yes, 30 million new jobs—in those countries, not here in the United States. We have lost jobs here in the United States under the Bush administration.

What is even worse than that is that those who have jobs, the vast majority, are losing real wages. Average weekly take-home pay, adjusted for inflation, is lower today than it was in 1959. If you look at just the years of the Bush administration, the figure has continued to get worse.

Since the end of 1986, let me measure from that point, real hourly earnings have declined by 4 percent. Real hourly compensation, which includes wages and benefits, has declined by 3 percent.

The decline in hourly pay means that people lucky enough to have jobs have to work longer hours in order to support their families. This is not programs by any reasonable definition.

This week the House and Senate both voted to grant some relief to unemployed workers. The money to provide this relief is in a trust fund where money is collected specifically for that purpose. These people who are unemployed today have paid into this trust fund while they were working, storing up for a rainy day. They did not pay into this unemployment trust fund in order for the President to take that money and use it for other purposes. They paid into that trust fund so that it would be there for a rainy day; so that if the economy did not recover, or if the recovery began to look exactly like the recession, there would be enough in the trust fund to help these families get by while they looked for new employment, while they get the retraining they need, while they look for new jobs and look for an opportunity to get back on their feet.

But the President says, notwithstanding the fact that these workers paid into the trust fund and it has been set aside for the purpose, he absolutely refuses to allow the unemployment benefits that these workers have paid for themselves. The House and Senate have both passed it. The President says he will veto it.

The employers have also paid into the trust fund. They have a stake in this because when the orders pick back up again, when we get a change in eco-

nomic policy, when the recovery begins to really pick up steam, they are going to want these employees back. And they do not want them just in destitute circumstances during this period. They have paid into that trust fund under the law just as the employees have. But the money paid in by the employers is also being used by the President for other purposes, rather than for what it was intended to be used.

It is no secret that the Federal Government is short of funds. However it is simply unacceptable for the Federal Government to be short on trust. The unemployed workers are not just statistics. They are real men and women trying to regain a measure of economic dignity. The President's refusal to help is a breach of trust which should be remedied.

If the President vetoes this bill I hope we will see enough independence on the other side of the aisle here in this Chamber to join with every single Democratic Member of the Senate who voted in favor of the right course of action, to take the money in this trust fund and use it for exactly what it was intended to be used—for those very employees who paid into the trust fund to use during the period they were unemployed.

So, Mr. President, I call upon my colleagues to prepare to override the expected veto. I call upon the President of the United States not to break faith with the American people, to change his economic policy so that we have a legitimate and meaningful and strong recovery and, in the meantime, to allow those who are unemployed, and who continue to be unemployed, to have the benefits from this trust fund that are theirs rightfully under the law.

I yield the floor, Mr. President, and 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. SASSER. Mr. President, I ask unanimous consent that the order of the quorum call be rescinded.

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

EXTENDED BENEFITS FOR UNEMPLOYED AMERICANS

Mr. SASSER. Mr. President, we are now 4 days into the new fiscal year for the Federal Government, but we are no closer to an economic renewal for our economy. The Department of Labor report this morning shows a slight downward fluctuation in the unemployment rate, but the indicators remain mixed. Payrolls increased by only 24,000 jobs in this past month, far less than expected. The Director of the Bureau of Labor Statistics, Dr. Norwood, said this morning: "We have yet to see any sustained signs of rebound in the labor market."

The other underlying story remains the same. We still have 8.5 million Americans without jobs, 2 million more than on the day President Bush came into office. Anyone who talks to American business people and the workers of this country understands the reality beneath the statistical surface. This recession continues to take its toll on the American people. Working Americans continue to lose their jobs at an unacceptable rate.

Mr. President, it used to be popular to talk about pockets of recession, about an industry-specific recession, or about a regional recession that only affected the west coast or the Midwest or the agricultural economy. But I want my colleagues to listen to the layoff announcements that were made just this past week.

American Express said that 1,700 jobs will be eliminated; DuPont announced it was laying off 1,095 workers, and even the Government of the State of Maryland declared that 1,766 public workers would lose their jobs.

The job loss now taking place spans all sectors of our economy. It is no longer region specific or industry specific. It is all across the board from financial services to heavy industry, white collar and blue collar jobs alike. The need for help is broad and it is compelling.

A strong bipartisan majority of both Houses of Congress moved to meet that need in a responsible and effective unemployment protection bill which will be on the President's desk by Tuesday of next week. All that separates millions of unemployed Americans from desperately needed relief is the President's signature on the dotted line.

Those who are out of work today, through no fault of their own, who want to work, who are actively looking for jobs are paying for the failure of this administration's economic program. At the heart of that failed record is an economic growth rate that is bleaker than it has been at any time since World War II.

Mr. President, I call your attention and that of my colleagues to this chart that I have before me. Gross national production per person is a measure of the average standard of living of our citizens. This is the measure that is popularly used by economists to determine whether or not the average citizen is progressing economically, holding their own or retrogressing.

If my colleagues will look at this chart, they will see that President Bush is the first President since Herbert Hoover who has presided over a decline in the standard of living of the American people. We just selected out since the Kennedy administration what has occurred in our economy. We note that the largest growth rate took place during the administrations of John Fitzgerald Kennedy and Lyndon Baines Johnson. The lowest growth rate took place in the Ford administration and the Eisenhower administration.

But we look at the Bush administration and this is the first administration since the Second World War, indeed since the Depression of the 1930's, that has had a negative per capita GNP growth rate. In real terms, the President has led this economy to an average per person GNP growth rate of a negative four-tenths of a percent a year. That means that the average American's real standard of living is declining. That means that the average American's real disposable income is declining. That means that for the average American, the quality of their life judged in economic terms is declining. Every other postwar President improved the standard of living of the American people, except one who is serving today.

All of this data is from the Department of Commerce. The data on poverty and income released by the Census Bureau last week underscores the message: Median income is sliding. Poverty in the United States of America is on the increase.

It is no secret for those of us who go out about this country and talk to our constituents and see their struggles that median income, the real income of the typical American household, has been stagnant for some time.

The Census Bureau's report is evidence that middle-income Americans are not even holding the line any more. They are losing ground. Median income fell by 2 percent in 1990. Outright poverty has increased its hold on our population as a result of this lengthy recession.

The Census Bureau tells us that 2 million more Americans fell into poverty last year in 1990; 33.6 million of our fellow countrymen lived below the poverty line in 1990, and the shame of it is that 1 in 5, or 20 percent of the children in this country, live in poverty as defined by the Census Bureau of our Government.

That is the state of the American economy. That is what has happened during this administration. Unemployment is up; poverty is up; and middle-class income is down.

Mr. President, I submit that this administration has a responsibility to the unemployed Americans who are reaping this bitter harvest. The President should sign the bill that provides unemployment protection to the millions of Americans who have paid for it, who have paid into the system and who deserve it.

The President says he wants to sign some other bill. He wants to sign any bill except the bill that will be on his desk Tuesday. He says he wants to sign the bill that is offered by Senator DOLE, which has not even passed this body.

I want to make this point just as forcefully and clearly as possible, be-

cause it is critical. There is absolutely no comparison between the Dole proposal and the legislation that will shortly be on the President's desk. I sat on the floor of this body just this last Tuesday, and I want to make this point graphically clear today. The Dole plan offers absolutely nothing to the vast majority of unemployed Americans, those who have already lost the protection of their unemployment benefits.

It will provide not 1 red cent to most of those who have been out of work the longest and who are in need of assistance immediately.

Let me demonstrate this assertion by the chart I have before me.

Since March, 1,740,000 Americans have exhausted their unemployment benefits nationwide. Under the proposal passed by this body last Tuesday and sent to the President, 1.55 million or almost 90 percent of those without benefits would qualify for extended benefits if they have not yet found a job under the Bentsen plan that we passed just this past week.

Contrast that, if you will, Mr. President, to the Dole plan. The Dole plan will leave 1.5 million people with absolutely no access to unemployment assistance. Under the Dole plan, only 14 percent of those ejected from the unemployment insurance system in the last 7 months would qualify for benefits. The remaining 86 percent, the longest suffering victims of the recession, do not have a chance to receive even one thin dime.

Compare the two proposals: 1,550,000 Americans under the Bentsen plan would get the unemployment compensation that they have paid for and are entitled to. Under the Dole proposal—which the President says he prefers—only 250,000 would qualify. Only 14 percent of the Americans who have exhausted their unemployment benefits would be eligible under the Dole plan, whereas 90 percent would be eligible under the Bentsen plan.

The Senator from Kansas says that his bill would put food on the table for unemployed Americans. I respond by saying it is not going to put anything on the table for those 1.5 million Americans whose economic plight is most severe and who are not helped by the Dole proposal.

Mr. President, there are 268,000 citizens of the State of California who have lost their unemployment protections since March. These 268,000 workers in California who have lost their unemployment protections would not be able to receive one dime under the Dole proposal.

The Bentsen plan, on the contrary, would deliver 13 weeks of benefits to those who are still unemployed in California.

Let us take another State. There are 35,000 Missourians who are eligible to receive 20 weeks of benefits under the Bentsen reach-back provision—the reach-back provision in the Bentsen plan. Not one of these workers would be helped by the Dole bill. In all, the Dole proposal fails to protect the citizens of 44 States who have lost their unemployment benefits in the last 7 months.

Those are just some of the deficiencies. There are others as well. The Dole plan offers very thin gruel, indeed, to those on the verge of exhausting their benefits. Citizens in States with unemployment rates as high as 8, 9, or 10 percent, States like California, Florida, or the State of Michigan, as the distinguished Senator from Michigan so eloquently spoke a moment ago of the plight of the workers in that State, the States of Mississippi, West Virginia, would receive only 6 weeks of benefits under the Dole bill compared to 13 to 20 weeks under the bill that will shortly be on the President's desk that passed this body just this past week.

Mr. President, I find particularly objectionable the position that the Dole plan takes toward our veterans. It attempts to pay for itself at the expense of the men and women who served and defended their country. The bill eliminates unemployment benefits for many of our military people returning from Desert Storm and Desert Shield. It eliminates benefits for those who are honorably discharged from the military after completing their tours of duty.

In total, the Dole plan is a 65-percent cut in unemployment benefits for veterans over the next 5 years. How do you explain that to a man or a woman returning from the deserts of Saudi Arabia who risked their lives defending what they perceived to be the interests of this country?

The bill on the President's desk, the Bentsen bill which we voted overwhelmingly for in this body, restores equity for veterans by putting their benefits on a par with private sector employees. I say that is the least we can do for those who served and sacrificed for us.

Finally, Mr. President, the administration calls the Bentsen proposal a budget buster because it is supposedly not paid for. Frankly, that accusation has the reek of hypocrisy from an administration that casually forgives a $7 billion debt from the country of Egypt to the Treasury of the United States, that sends foreign aid on an emergency basis to country after country after country just in the past few months.

In all truth, Mr. President, the insurance we propose has been paid for. It has been paid for by the same working men and women who are now desperate for help. It has been paid for by their employers who have paid into the fund for their benefit pursuant to law.

The current balance in the unemployment insurance trust fund is $8 billion. The shame of it is that $500 million has been added to the unemployment insurance trust fund during the course of this recession alone.

Now, that says it all. This trust fund, which is collected from workers and employers to be used to help those who are unemployed, that they pay into for a rainy day, here in a time of recession when millions and millions and millions are unemployed, continues to increase its balance. That, I say, Mr. President, is a national shame. While Americans are suffering, the trust fund that has been established to help them is swelling and this administration has the audacity to say that those who wish to help these Americans who are struggling are busting the budget.

Mr. President, the minority leader has urged that we not play politics with unemployed Americans. I could not agree more. He has admonished this body not to deny unemployment benefits for even "1 additional hour," and I could not agree with that more. That is why the President should sign this bill that passed this body by an overwhelming margin when it reaches his desk on Tuesday. He can give these suffering millions relief just with the stroke of his pen.

I urge him to do so without further delay.

Mr. President, I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, it is my understanding that the time for morning business concludes at 10:30. Senator DURENBERGER is also waiting on this floor. He and I will be talking about the same issue, and I hope that he will be able to get unanimous consent to go over a few minutes because what we will discuss we believe to be important.

Mr. PRYOR. Mr. President, I rise today to address the issue of implementation of Medicare physician payment reform. I commend my colleagues, Senators ROCKEFELLER and DURENBERGER for their efforts to assure the proper implementation of this reform by the Health Care Financing Administration [HCFA].

I have heard from many Arkansan physicians who are very troubled over many issues with the implementation of this new payment system. As chairman of the Aging Committee, I urge HCFA to respond to the message sent by the legislation introduced today. The effectiveness of the physician payment reform system will depend on HCFA's willingness to follow the intent of the Congress when it crafted this legislation and its responsiveness to the many issues that have been raised since the issuance of the proposed rule on June 5. It is my hope that the administration will make a reasonable

compromise with physicians who have voiced their concerns.

Members of Congress, including myself, have been particularly troubled by the budget reduction that HCFA incorporated into its proposed rule. The budget conferees, along with many physicians' groups who supported physician payment reform, clearly anticipated that the fee schedule would neither increase nor decrease overall Medicare spending for physician reimbursement.

The proposed legislation addresses the very important issue of changes in volume and intensity of services in response to the new payment system. My concern is that HCFA's continued insistence on the so-called behavioral offset may turn out to be a self-fulfilling prophecy. Indeed, if implemented as currently proposed, it may induce the very behavior it is designed to control.

My colleagues are to be commended for addressing other important issues in this legislation introduced today. Specifically, payments for interpretation of EKG's, the treatment of new physicians and payments for anesthesia services are issues that trouble many physicians in Arkansas.

I am also pleased that the proposed legislation contains a provision that would hold off implementation of the proposed rule regarding the methodology for determining the amount paid for drugs and biologicals furnished incident to physicians' services. HCFA continues to focus its pharmaceutical cost containment proposals on providers rather than pharmaceutical manufacturers. All through the 1980's, HCFA and State Medicaid Programs continued to ratchet down on reimbursement rates when the escalating costs of the Medicaid Prescription Drug Program were due to manufacturers' prices, not pharmacists' charges.

By proposing to reduce reimbursement to physicians at AWP–15 percent, HCFA has once again failed to recognize that it should find ways to contain the costs of the drugs that physicians administer to patients, rather than targeting the physician who has no control over the price of the drug dispensed. In fact, I suggest that HCFA might find its savings by requiring that manufacturers give rebates to the Medicare Program for drugs administered in the physician's office.

Mr. President, as the administration moves to implement this new payment system, I urge HCFA to hear and respond to the many concerns of the physicians who serve our Nation's older Americans. I was heartened to learn that the administration has apparently crafted a way to implement the law while maintaining congressional intent with regard to budget neutrality.

As my colleagues on the Finance Committee and I intimated in our June 28, 1991, letter to Secretary Sullivan, we strongly believe that a majority of the problems addressed by the Physician Payment Reform Implementation Act of 1991 can and should be solved administratively, rather than through potentially costly legislation. It is for this reason that I will not cosponsor this legislation at this time; however, I will closely follow HCFA's responsiveness to the legitimate concerns of physicians with the Congress with regard to physician payment reform issues.

(The remarks of Mr. ROCKEFELLER pertaining to the introduction of S. 1810 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ROCKEFELLER. I thank the Chair. I yield the floor.

EXTENSION OF TIME FOR MORNING BUSINESS

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the time for morning business be extended until 10:45.

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

MINNESOTA TWINS

Mr. DURENBERGER. Mr. President, once again the country's attention turns from politics to baseball. Once again, the Minnesota Twins are the Western Division champions in the American League.

In 1987 they surprised everybody by coming from nowhere to win the World Series. This year they set another record by coming from last place to first place, but they did it on a steady rise such that this Senator feels at least that it means both Toronto and whoever the National League champion is will recede into history.

Mr. President, last Sunday, my home team Minnesota Twins again became the champions of the American League Western Division. This is an extraordinary feat. Not since 1890, has a team gone from first place to last place in 1 year.

As Minnesota's "Boys of Summer" await the upcoming American League championship series against the Toronto Blue Jays, their fans are afforded a chance to reflect on the long road which has led the Twins organization from a last place finish in 1990 to their fifth championship since their inaugural 1961 season.

Along with the return of the now famous "Homer Hanky" we have been treated to the sight of many individual and team efforts. Whether it was the splendid play of Rookie of the Year candidate Chuck Knoblauch, the pitching of Erickson, Morris, and Tapani, or the outstanding defense of the team as a whole, each and every member is a division champion and has contributed to this exciting summer. This magical season has also seen a 15 game winning streak as well as a magnificent recovery from a 2–9 record at the beginning of the season.

Mr. President, again I congratulate the Minnesota Twins on a job well done and hope that I will be attending the 1991 World Series in the Minneapolis Metrodome.

EXTENDED UNEMPLOYMENT BENEFITS

Mr. DURENBERGER. Mr. President, this morning's unemployment figures suggest that the economy is beginning to move forward, out of recession. While we have a way to go before there is a solid growth in the economy, I believe it is vitally important that Congress adopt a reasonable extended benefits program for the long-term unemployed.

Mr. President, it is a tragedy that we have played politics with this issue. I think every Member in this body knows that. Certainly, the Members on the other side of the aisle have spent a lot of time here this morning, and at other times, casting all of the blame on the President of the United States for the fact that extended benefits have not been granted. But the American people ought to know the facts.

It is true that in early summer President Bush opposed extended benefits. But Republicans, particularly on the Senate Finance Committee, supported Senator BENTSEN's bill. We supported the original Bentsen bill, and the President then changed his mind and asked only that we pay for those extended benefits. But the Democrats will not change their position.

They want to grant extended benefits to unemployed persons, appropriately, but they do not want the Government to pay for it within the contours of the 1990 budget agreement. It sounds a lot like the House of Representatives' banking system.

I have introduced legislation (S. 1789) and the Republican leader has introduced legislation, that would grant extended benefits for the long-term unemployed, my bill is a better deal for the unemployed in my State than the Bentsen bill. The President expressed his desire to sign the Dole bill. I believe he would sign my legislation.

The reason he would sign either of these bills is because they pay for the promises they make. They finance the payment of the benefits provided for in last year's budget agreement. Strange as that may seem to the people on the other side of the aisle, that is the reality that Americans are beginning to expect of the people in this Chamber.

It seems to me that the only thing some Members on the other side of the aisle want is to hear the President declare an economic emergency. They want to use this issue for strictly political purposes, and I think that is just wrong.

So let us get beyond the politics of the 1992 election and beyond partisan-

ship, and when President Bush vetoes an unpaid promise tomorrow, I want Senator RIEGLE, Senator SASSER, my colleague Senator BENTSEN, and the others, to help pass my bill, S. 1789. Let us do it on Monday or Tuesday of next week.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. I thank the Chair.

(The remarks of Mr. DURENBERGER pertaining to the introduction of S. 1810 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,393d day that Terry Anderson has been held captive in Lebanon.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the Senate now go into executive session to consider the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

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

The clerk will report.

The assistant legislative clerk read as follows:

The nomination of Clarence Thomas, of Georgia, 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 may proceed.

Mr. WELLSTONE. Mr. President, this will, I believe, be one of the most important decisions that I have made or will make as a Senator of the United States: whether to confirm Clarence Thomas as the 106th Justice of the U.S. Supreme Court.

The placing of a human being on this Nation's highest Court cannot be done by the President alone. Section 2 of the second article of the U.S. Constitution states that the President shall have the power to nominate someone to the high Court only "by and with the Advice and Consent of the Senate. * * *"

At the Constitutional Convention, the delegates first agreed on the ways that the legislative and executive branches of government would be structured. There was extensive disagreement, however, on how to create the third—judicial—branch. Most preliminary proposals gave Congress alone the power to appoint judges to the Supreme Court. It was not until relatively late in the proceedings that the idea of nomination by the President and confirmation by the Senate was proposed and, finally, adopted.

The coequal power of both of the remaining branches of government in the creation of the third branch is at the core of our governmental structure of separation of powers. The fact that both of the remaining powers must concur also reflects the gravity of these decisions. The Supreme Court is the guardian of all of our Constitutional rights, including the rights guaranteed by the first amendment, those rules by which we live in a democracy. It is the place where each person has an equal right to be heard, regardless of political power, wealth, or influence. It is the only place in our national governmental structure where all citizens have equal standing to have their concerns addressed and their rights vindicated. It is only the Supreme Court that can provide protection against usurpation of power by one or the other branches of government.

It has been said that there is hardly an aspect of American life that has not been addressed by the Supreme Court. Its decisions have not been easy ones, and have often been embroiled in the controversies that have torn and divided us as a people. But throughout our history, the gravity of its role has never been questioned. Although it has no standing army, its decisions have commanded the ultimate respect and obedience of the people and of the other branches of Government for more than 200 years.

The fate of all of our constitutional rights, and of our governmental system of separation of powers, ultimately rests in the hands of the nine men and women who comprise this Court. The appointment of someone to this Court is not for a few years, but for a lifetime. The decisions made by this Court cannot be reviewed by anyone, except by the Court itself. Whoever replaces Justice Thurgood Marshall will serve well into the next century and will influence the legal and political landscape for decades to come. The choice of anyone for this position of ultimate power is a test of the governmental structure designed by the Founders and of our will as a people.

PROCESS OF CONFIRMATION

The process of confirmation under all of these circumstances must be a searching one. The Constitution requires nothing less. For the Senate to confirm a nomination to this Nation's highest Court with fundamental ignorance about the nominee's true character, beliefs, and vision for our society and for our country would be an abdication of the grave responsibility that the Constitution has placed upon us.

At the outset of the confirmation hearings, I felt that I knew who Judge Thomas is. Although I might differ—indeed do differ—with many of the underlying visions of reality that his past writings and speeches represent, I felt that I knew, fundamentally, who this man is. I admired the great odds that he overcame in his life and his apparent attachment to principle. As the hearings progressed, I became increasingly and deeply disturbed. During the course of these hearings, he proceeded to disavow his prior speeches, writings, and statements of belief. His prior speeches, writings, and statements are now said to be creatures of the moment, crafted in response to the particular audiences; he is now an empty vessel, without policy positions, beliefs, or "opinions in important areas that could come before [the] Court." He is, is in own words, "stripped down like a runner." What is this? Where is the substance here on which I can, as a Senator—bound by my oath to serve the people who elected me—give my advice and consent?

I believe that the presentation of a nominee to the Senate as an empty vessel, with no articulable judicial philosophy or beliefs, is a blatant attempt to destroy the Senate's constitutional right and obligation to render its advice and consent. As a U.S. Senator, I cannot vote to confirm someone who has no views. I cannot give advice and consent when I have been deliberately told that I cannot know anything about how this nominee will approach any of the fundamental questions of our time.

BUSH ADMINISTRATION ARGUMENTS

The Bush administration and its supporters argue that the Senate has no right to know the judicial philosophy of the nominee. It argues that the text of the law answers all questions, that a nominee who swears to uphold the law should not be questioned further. It claims that any attempt to obtain answers is an attempt to interject politics into the judicial process.

The absurd nature of this argument is apparent on its face. Law and legal decisions resolve disputes between people. They are the process of choice about what kind of society, what kind of a nation, we wish to be. What is the "establishment" of religion? What is the meaning of "equal protection" of the laws? What is "cruel and unusual" punishment? What are we to do with "unenumerated" rights, such as the right to privacy, or questions which were never even posed to the Founders, such as those involving biotechnology and the "right to die" or the right to privacy in a era of massive systems of electronic data and electronic intelligence? None of these questions are answered by the constitutional text. Nor are they answered by the writings or speeches of the Founders—who, by varying accounts, could include the

small group of men who drafted the Constitution, the hundreds of citizens who gathered in 13 State conventions to ratify the Constitution, or the thousands more who—although many of them were disenfranchised or enslaved—"ratified" it by tacit acquiescence to its terms. To say that all of these questions are answered by the Constitution's text or that concern about these questions is just "politics is to insult the intelligence of the American people.

The relationship of law to society is, indeed, glaringly apparent in the history of the Supreme Court's decisions themselves. The Supreme Court, in times past, has held that black Americans are not citizens—Dred Scott versus Sandford, 1857; upheld the barring of women from the practice of law—Bradwell versus Illinois, 1873; struck down legislation which attempted to establish a minimum wage—Adkins versus Children's Hospital, 1923; and upheld the mass internment of thousands of Japanese Americans who committed no crime—Korematsu versus United States, 1944. All of these decisions were made in another time. All of them are ones that we, now would find abhorrent. But to say that the process of Constitutional interpretation is the "mechanical application" of the "literal letter of the written law" is a naivete that is indicated by our own history.

The Bush administration also opposes any inquiry on the ground that it is inappropriate for the Senate to ask how a nominee would vote in a pending or possible case. I agree that attempting to commit a nominee to a particular position on a specific issue is inappropriate. Such questions are, however, far different from questions which attempt to determine who this nominee is, what the basic beliefs that he will bring to the task are.

In 1987, Judge Thomas wrote an article entitled "Toward a 'Plain Reading' of the Constitution, the Declaration of Independence in Constitutional Interpretation." In that article, he wrote that "the first principles of equality and liberty should inspire our political and constitutional thinking." It is not know to me if this statement is one that he now disavows. His statement, however, reflects what we all know: that external values must be brought to the tasks of Constitutional interpretation.

The conviction that the Senate is constitutionally bound to make an independent determination of the fitness of every Presidential nominee is not an invention of the 20 century or of these political times. At the Constitutional Convention, Gouverneur Morris described the advice and consent clause as granting to the Senate the power "to appoint judge nominated to [it] by the President." Joseph Story, in his famous "Commentaries on the Constitution of the United States," wrote more than 40 years later that Senators' "own dignity and sense of character, their duty to their country", depend upon their independent discharge of this obligation. In the 200-year history of our country, the Senate has rejected 27-Presidential nominations for the Supreme Court. When considering the nomination of Judge John Parker in 1930, Senator Norris of Nebraska stated: "When we are passing on a judge, * * * we not only ought to know whether he is good lawyer, not only whether he is honest * * * but we ought to know how he approaches these great questions of human liberty." If the beliefs of a nominee cannot be know, either because he has none or because the process of inquiry itself is deemed to be illegitimate, then we are in deep trouble indeed. Senators, bound by the Constitution and by their own consciences, cannot execute the duty that they have been sworn to perform. The delicate balance of powers, so carefully crafted by the Framers, is paralyzed.

CHALLENGE TO THE SENATE AND DECISION

The Founders of this Nation and the drafters of our Constitution were fare more profound thinkers—or more honest—than we. They understood that the quality or oppression of this government is dependent upon the beliefs and character of the people who wield its power. In a speech to the Virginia ratifying convention in 1788, Madison stated: "I go on this great republican principle, that the people will have virtue [dedication to the public good] and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks—no form of government—can render us secure."

As citizens of this country, we may differ in our views. The fact that there are divisions does not, however, mean that we can pretend that the law is a mechanical enterprise or that, in the Supreme Court, the fate of our constitutional rights and liberties is not dependent upon the beliefs, character, and integrity of those who occupy the highest positions of power.

As a U.S. Senator, I am in no position to confirm someone who have no views. I cannot give advice and consent to someone who is an empty vessel, when I have no idea what this person stands for. It is impossible for me, in this situation, to carry out the responsibility that the Constitution requires that I perform.

I think that it is time for the Senate to refuse to confirm a nomination that has been presented and structured in a way that attempts to deprive us of the ability to exercise our independent judgment. This will be my position not just for this nominee, but for any nominee. If a person has no views, no articulable philosophy, then I cannot make the judgment that the Constitution requires. I will vote against this nominee, and any nominee, presented this way. I therefore vote no on this nomination. I challenge my fellow Senators to join me in my refusal to acquiesce in the evisceration of our historic role—our constitutionally mandated role—of advice and consent.

Mr. President, I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Thank you, Mr. President.

Mr. President, yesterday, I expressed my concern about the fact that Judge Thomas' opponents are arguing against his confirmation because they disagreed with the position that he took as a policymaker under positions he held with President Reagan and President Bush, not because my colleagues have any sound basis for questioning his qualifications to become a Supreme Court Justice.

In reality, my colleagues cloak their ideological opposition in a debate about judicial philosophy that they attribute to Judge Thomas. While I believe that the debate over Clarence Thomas' policy decisions before he became a judge is an appropriate and shortsighted subject for a debate, the record should be set straight about positions Judge Thomas took while he was still Clarence Thomas, a political official under President Reagan and President Bush.

What he did as a policymaker he made very clear to use—that he was not going to let that interfere with his job of judging. The position of Justice of the Supreme Court, as he has practiced as an appeals court judge, is to interpret the law, to interpret the Constitution. So he let us know clearly that is what he was going to do. That is what he has been doing for a year-and-a-half on the Court of Appeals and that is what he is going to do as a judge.

During this debate, of course, our colleagues try to bring a lot of these policy statements that he made as an administrative branch official, that somehow this was going to determine his position on interpreting law and interpreting the Constitution. He made very clear that was not going to be the case.

On the other hand, these views were expressed on this floor yesterday and I am sure they will be today trying to muddy the waters, that somehow something he did or said as an administrative branch official for President Reagan and President Bush will, in fact, have an impact upon his decisionmaking as a judge. Not so. But because those accusations are being made here, Mr. President, I think we have to respond to them. Not respond because we give them credibility that they have a legitimacy in determining the qualifications of this person to be an Associate Justice, but because they are not,

as they are being characterized, as extreme positions even if they did justify our consideration.

Judge Thomas' opponents characterized those opinions as extreme when they were not. They were opinions that, in my opinion, are shared by a majority of Americans. Here is what Clarence Thomas had to say when he was a policymaker for President Reagan and President Bush. He said: "Officials of our Government need to get back in touch with the moral philosophy that is the foundation of our constitutional system."

He said: "The traditional liberal approach to civil rights, especially the emphasis upon quotas, isn't working, and we need new approaches."

He said: "Congress has evolved into an irresponsible institution that has lost sight of the public interest."

Mr. President, you and I and our constituencies face that accusation all the time. There is nothing extreme about an administrator, Clarence Thomas, saying those things when our constituents say those to us all the time. These are hardly extreme views.

Some of the views that Clarence Thomas espoused as a policymaker were new ideas, but this body, this Government, the American people would be in a sorry state if policymakers must be punished for proposing new ideas solely because they conflict with the party line of those in control of Congress.

I happen to think that people who weigh these policy statements that Judge Thomas made as an administrator, and trying to detract from what he has done as a judge or what his philosophy of a judge is, is in fact punishing Judge Thomas if he would be denied a seat on the Supreme Court just because of some statements he made as a policymaker that are not going to be involved in his position, doing his job as a judge.

In Judge Thomas' search for a way to reinvigorate and rethink civil rights policy, he looked to the right place, the place that all of us ought to be looking—The Founding Fathers and the moral philosophy that they tried to codify in our Constitution.

The Founding Fathers, Clarence Thomas noted, adhered to the classical liberal theory of natural rights. This theory, which I think we all still subscribe to, holds that there are certain indisputable moral truths of human society that are self-evident to reason. The most fundamental of these truths is recited in our own Declaration of Independence: All men are created equal. It is self-evident that no man is born to rule over other men.

From this principle followed the notion that our Government must be constructed in a manner most likely to protect this fundamental liberty which is every person's birthright. Thus, we arrived at our constitutional system of separation of powers with checks and balances against each other entrusting the duty of protecting individuals from each other and promoting the common welfare to three separate branches of our Government whose structure would limit the powers of other branches sufficiently to inhibit unnecessary, as well as unconstitutional, infringements upon the liberty of our citizenry.

Clarence Thomas did not argue that judges should look to moral philosophy for the rule in a case or controversy and it is very constitutional, fundamental to the powers of the judicial branch of Government that they only deal with cases and with controversy presented to them.

He said that officers of our Government should be mindful of these founding principles in carrying out their constitutional responsibilities of law making, law execution, and the applying of the law.

Perhaps my colleagues who oppose Clarence Thomas think that there is something extreme about someone who suggests that American government should be informed by morality. But the legitimacy of government is ultimately a function of its morality.

We have seen many governments in this century which were legal but not moral. Maybe we can see them this very day on the surface of this planet of ours. But somehow being legal, even though not moral, as far as I am concerned is still illegitimate. Apartheid is legal. Jim Crow was legal. Both systems of separate but supposedly equal were protected by laws promulgated pursuant to constitutional authority. But they were not moral systems.

National socialism in Germany was legal pursuant to the Nuremberg laws but morally reprehensible—a legal regime dedicated to hideous subversions of the natural rights of individuals. The tyranny of Soviet communism was imposed pursuant to their constitution and their laws but at the same time it was dedicated to the destruction of fundamental individual liberties.

Clarence Thomas' espousal of natural rights was no more extreme than Thomas Jefferson's, for without morality behind the laws we pass, the President enforces, and our courts apply, the people have no obligation to subject themselves to our governance. Clarence Thomas's natural rights theories were not judicial philosophies. They were political philosophies about the moral foundations that are essential to a just government doing its job—performing its function.

Upon his thoughtful return to classical liberalism, Clarence Thomas evolved a theory of civil rights which accorded with his philosophy of true liberalism—limited government to promote individual liberty. Clarence Thomas was never opposed to affirmative action. He was opposed to quotas. If that is extreme, then a majority of Americans are extreme.

Clarence Thomas expoused a broarder vision of affirmative action, a broader vision than is espoused or foreseen by most Members of Congress. He advocated affirmative action for those who really deserve a break, based upon a disadvantaged status. He said a person should not get a special preference just because of their sex or of their race, for a person may be a member of a suspect class and still not suffer many of the unfortunate incidents associated with that status.

During his hearing before our committee, he said it this way to Senator SPECTER, and I quote Judge Thomas:

> I think we all know all disadvantaged people aren't black and all black people aren't disadvantaged. The question is whether or not you are going to pinpoint your policy on people with disadvantages, or are you going to simply do it by race.

That determination, of an individual's disadvantaged background, is a difficult determination. Now, of course, for Senators or for policymakers downtown, or for even judges enforcing our laws, it is easier to extend a benefit to a minority group as a whole rather than individuals who need the affirmative action based upon disadvantaged status.

But just because it is an easier way of doing it does not make it right, and that is the question that Clarence Thomas puts before our Government, before the American people.

Clarence Thomas was no Benedict Arnold, contrary to the assertions of same. He was and is a Patrick Henry. He had the courage to question whether affirmative action in the form of quotas might actually work against the long-term interests of his own race. He said this even though he knew there were many who have vested interests in the status quo who would try to silence him. They have not silenced him yet. But as long as this debate goes on, they will keep trying.

Clarence Thomas did not claim ours to be a colorblind society. He knew racism and was devoted—and still is devoted—to fighting it. But he had the honesty and the courage as a policymaker to say that the old approaches to discrimination of numerical quotas without regard for each individual's needs, he had the courage to say that this was not working after 2½ decades. He said that quotas were not changing the quality of life in the ghettos. All you have to do is travel there and we all can find it out for ourselves. Instead, he said, the best remedy for the legacy of slavery and discrimination is to better educate the poor, be more aggressive about promoting jobs for the poor and, perhaps most important, eliminate crime from poor neighborhoods so that the ma-and-pa operations can be there like they were prior to a quarter of a century ago.

These, Mr. President, are not extreme views. They are views I think

most Americans share. They may be views that are threatening to the patrons of the dependent poor, but Clarence Thomas should not and cannot and I do not believe will be punished by this body for his efforts to liberate the poor from their dependency upon government, although that might eliminate a significant political constituency of the liberal plantation.

After years of contemplating civil rights issues and the failure of established approaches to eliminate the vestiges of discrimination and slavery, Clarence Thomas began in his position as a policymaker espousing positions that may have his senatorial opponents most concerned, and that theory is that there could be a problem right here on Capitol Hill, that Congress in fact may be part of the problem. His extreme position was that Congress is no longer a truly deliberative body; that we are not as concerned about the public interest as we are concerned about protecting our own fiefdoms by taking care of special interest groups.

Mr. President, if that is an extreme position, then I am afraid most of our constituents are also extremist because they think that about Congress, for this is hardly an unusual opinion of a Congress that gives itself midnight pay raises, a Congress that uses taxpayers' money to give itself overdraft insurance at the House of Representatives bank, a Congress that refuses to subject itself to the laws that it foists upon society as a whole, because we exempt ourselves from a lot of those laws. Those are just three reasons why we might not be held in high regard, and a legitimacy to Clarence Thomas' questioning of whether or not Congress fulfills its constitutional role as a deliberative body.

My colleagues can criticize Clarence Thomas for having espoused a return to morality in government. They can criticize him for trying earnestly to develop new approaches to eliminating the last vestiges of Jim Crow and slavery. They can criticize him for criticizing Congress. But when they criticize Clarence Thomas for the fresh ideas he has advocated before he became a judge, they are only engaging in that hallowed congressional physics experiment of seeing how much hot air it takes to inflate a member of Congress on to the evening network TV news, for most Americans have heard Clarence Thomas. They support him because he shares their values.

I close by warning those who are watching the debate that some of my colleagues criticize Clarence Thomas for questioning the effectiveness of civil rights laws, minimum wage laws, and laws depriving individuals of their property. But these are the same Members, with the same philosophy, who have legislated themselves to be the only class of people in our society expressly exempt from following civil rights laws, from following minimum wage laws, and many other laws passed for everyone else to follow but the 100 Members of the Senate.

So there is nothing extreme about Clarence Thomas' views as a policymaker. But it would not matter if there was something extreme about those views. He has made it very clear to us that he is going to be a judge who interprets our law, not foist his view of the law upon the people of this country. But he accepts our view of the law, and he is going to be concerned about original intent of the Constitution being considered in the debate on interpretation of that document.

That is what we ought to be judging Clarence Thomas on: his judicial philosophy of restraint, the fact that he is competent to be Associate Justice, and that he is a person of integrity. We should not be judging him upon statements he made as an appointee of President Reagan and President Bush.

So I urge my colleagues to support Clarence Thomas on his record as a judge, and upon his philosophy of judging.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to speak on the nomination of The Honorable Clarence Thomas to be an Associate Justice of the Supreme Court. In doing so, I want to recall and recount the path that I have walked along to come to the conclusion that I will indicate today.

When I met with Judge Clarence Thomas in my office this past summer, I was impressed by his strength of character, independence of mind, and intellect generally. I found him to be an engaging, thoughtful man who clearly enjoys grappling with complex legal issues and delights in the special challenges and responsibilities of being a judge. His academic and professional achievements are testimony to his appreciation for the value of hard work and determination—qualities that, in my mind, are too often overlooked in evaluating judicial nominees, but the importance of which cannot be overstated because being a good judge requires the willingness to do hard work. Indeed, his entire life is an inspiring example of what an individual who has faith, ability, and a desire to work can achieve in this country, even in the face of the worst kinds of prejudice and adversity. As he himself has said, "Only in America."

During our hour-long meeting, we discussed a number of general legal issues, certain of his writings, and his approach to deciding cases before him at the circuit court. I was reassured by his answers. He did not and does not strike me as a rigid ideologue. In fact, his life story demonstrates that he does not find easy comfort in convention, but challenges settled truths with vigor and intelligence.

I have read Judge Thomas' political writings and his circuit court opinions. The tone and content of some of his earlier articles and speeches raised questions in my mind, but I understand that they were written while he was in the political arena. Judge Thomas' judicial opinions, on the other hand, have a distinctly different cast. They are, on the whole, solid, thoughtful, and balanced.

The uproar over Judge Thomas' exploration in his writings of principles of natural law is curious and, I fear, on the part of some who should know better, disingenuous. Jurists of all persuasions have looked to higher principles in interpreting the Constitution and have found emanations and penumbras and original intent. Indeed, natural law as applied to debate over equal rights—which is how Judge Thomas limited it in his conversation with me and in his testimony—has a distinguished history in our Nation and, in fact, I am proud to say found its origins in my State of Connecticut. As Justice Thurgood Marshall noted in his brief on behalf of the NAACP Legal Defense Fund in Brown versus Board of Education:

> The first comprehensive crystallization of antislavery constitutional theory occurred in 1834 in the arguments of W.W. Ellsworth and Calvin Goddard, two of the outstanding lawyers and statesmen of Connecticut, on the appeal of the conviction of Prudence Crandall for violation of an ordinance forbidding the education of non-resident colored persons without the consent of authorities. They reveal this theory as based on broad natural rights premises and on an ethical interpretation of American origins and history.

Judge Thomas has explained to my satisfaction that his praise for Lewis Lehrman's article applying principles of natural law to the debate over abortion does not signal his adoption of natural law as a judicial philosophy or his endorsement of Lehrman's conclusions. There is no hint of natural law analysis in any of Judge Thomas' circuit court opinions.

Many people are deeply and understandably troubled by the serious consequences for our society if Roe versus Wade is overruled by the Supreme Court. On this question, I take Judge Thomas at his word, given under oath, that he has not reached a conclusion on the legal issues underpinning Roe versus Wade. Those who doubt that and assume he has passed a White House litmus test on the issue also have to assume that the next nominee would face the same testing.

Overall, Mr. President, however, I must say that I found Judge Thomas' testimony before the Judiciary Committee to be unsatisfying, and I would guess he did, as well. I was disquieted by his testimony, not because he expressed some views which are different from mine, which he did, but because

he appeared almost casually willing, at times, to express opinions on some very current and complex issues of constitutional law—for example, on the establishment of religion clause—and reluctant to express any thoughts on others.

That quick conclusiveness on some issues and labored circumspection on others is at odds with my personal impression of Judge Thomas from our meeting this summer, from my reading of his judicial opinions, and from the impression of many others who have known Judge Thomas long and well.

I have concluded that the confirmation process, particularly as it has evolved since the Bork nomination, evoked that result. The lesson apparently learned by the White House and by nominees from Judge Bork's defeat is that blandness and selective forthrightness are rewarded. Nominees are in the position of choosing which constitutional issues appear to be politically safe and popular to speak about freely, and which are not.

That leads me to say that I am sure I find myself in the minority in suggesting that Judge Thomas and other nominees should express fewer, rather than more, opinions on controversial constitutional cases in their testimony before the Senate.

I do not believe that a nominee should be required to indicate how he or she may vote on a particular issue that is likely to be coming before the Court, or be asked to endorse or criticize particular Supreme Court decisions that are unsettled or controversial.

As a lawyer, I am disturbed by the notion that litigants may appear before Justices of the Supreme Court, who have committed themselves in a political forum to one or another side of a complex constitutional issue, without the benefits of briefs, oral arguments, or research. Nominees should be asked their views on legal issues, but not be cajoled or coerced into proclaiming positions on unsettled or controversial cases that have been heard by the Court, or are likely to be heard by the Court.

Part of the blame for this politicization of the judicial nominations process lies, of course, with the tendency of some in the Reagan and Bush administrations to treat the Supreme Court appointments as just one more campaign promise. Who can blame the members of the Judiciary Committee for asking probing questions on controversial constitutional issues aimed at determining if a litmus test has already been applied, if a Presidential candidate has baldly promised the voters one kind of Supreme Court or another? And who can blame the administration for selecting nominees whose judicial records and writings are thin enough to avoid alienating too many Senators, or for coaching nominees, especially those like Judge Thomas who do have ample written records, to be circumspect on some issues and not on others.

Mr. President, I think this cycle has deep roots, and it originates, I believe, in the unwillingness of the executive and legislative branches to confront controversial societal problems, preferring instead to let the judiciary make society's tough choices. Indeed, the first aggressive Senate questioning of Supreme Court nominees was by conservative Senators in the late 1950's who, disturbed by the Court's activism on civil rights in the face of congressional and Presidential delay, sought assurances that nominees favored judicial restraint.

The pattern has been repeated, of course, several times since then. The judiciary fills the vacuum on a pressing political problem which neither executive or legislative branches is willing to confront. The nomination process then becomes highly politicized as advocates on opposite sides of the Court's decision seek to endorse or reject nominees who are likely to overturn the precedent.

The process, in my opinion, is not healthy. It harms all three branches of Government. It muddles the process of evaluating nominees, and makes the task of developing a uniform standard to apply to all nominees virtually impossible.

Mr. President, after much thought, I have concluded that the dissatisfaction I felt after the Thomas hearings is more a reflection of the cycle I have described, the shortcomings of the process, of which I see Judge Thomas as a victim rather than an indictment of his abilities or character.

In listening to our colleague from Missouri, Senator DANFORTH, on the floor of this Senate during the morning of the Judiciary Committee vote, I was struck, as I must say I so often am, by the good sense of what he had to say. The process of evaluating any judicial nominee, he noted, contains a large element of trust. We are trying to project what a nominee will do over a period of years to come.

Judge Thomas' strongest supporters, Senator DANFORTH continued, are those who know him best. His most vocal critics are those who know him least. I have heard from a wide range of people, people I know, people I do not know, many of whom know Judge Thomas well, either because they worked for him, or with him, or in the case of Senator DANFORTH, for whom he worked. I have been struck by the uniformity of their praise for his openmindedness, his character, his intellect and powers of analysis, his discipline, and his fairness.

The heartfelt loyalty and respect he engendered from many people who hold very different political views than he, including my teacher and friend, Guido Calabresi, now dean of the Yale Law School, is impressive.

Mr. President, while we in this Chamber are agitating over what effect this nominee may have on our system of justice, we must be certain not to treat him unjustly; for if we do an injustice to an individual in pursuit of a general notion of justice, have we, in fact, acted justly? Judge Thomas has come very far in his life, from impoverished rural Georgia, to two of the finest academic institutions in our country, to the Missouri Attorney General's Office, to the staff of the U.S. Congress, to the private sector, to the executive branch, to the D.C. Court of Appeals, and now to the steps of the U.S. Supreme Court.

We must not deny him entrance because we are disturbed by how political the nomination process has become, or because we are concerned about the direction that previous nominees, already confirmed by the Senate and sitting on the Supreme Court, may take. In my opinion, it would be unfair and unjust to this man, Clarence Thomas.

Mr. President, the Constitution does not grant the Senate the privilege of nominating Supreme Court Justices. Our responsibility is to advise and consent. For me, that means determining whether the nominee, the person nominated by the President, has the requisite legal competence and balance, the personal character and intellect, and the independence and fairness of judgment.

Mr. President, I conclude that Judge Thomas does have these requisite characteristics, and I will, therefore, vote to confirm his nomination.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KOHL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH. 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. SMITH. Mr. President, the 1988 election was a referendum in that it was not only a referendum for our President, but I think it was a referendum as a nation in terms of what kind of courts we are going to have in the future, what kind of people we are going to have upon those courts.

The American people in that election rejected the lenient courts of the 1970's, judges who place the rights of criminals above the rights of victims, judges who expunge from the Bill of Rights enumerated rights they do not agree with, while inventing rights not mentioned in the document at all.

Mr. President, the American people did choose George Bush but, in the process, they cast their lot in favor of judges who interpret the law, not judges who make it, judges who do not

place the rights of criminals ahead of the rights of victims, and judges who do not view their role as engineering society around their particular social views. I believe that Clarence Thomas is that kind of judge.

By now, the details of Clarence Thomas' childhood have become as familiar as they are extraordinary. He was raised by foster parents, educated by nuns, victimized by poverty and racism. Thomas is a role model for children currently struggling against the same formidable obstacles. Despite the representations to the contrary by even his harshest critics, Thomas succeeded on the basis of his own merit, period. He attended college and was admitted to Yale Law School before the infamous 1972 Executive order, which made affirmative action the law of the land.

Now we are treated to somewhat insulting insinuations that Clarence Thomas could not have made it without racial preference, this by the same partisans who claim that racial quotas, rather than standardized test scores, should be considered in everything from college admissions to employment decisions. It is almost as if these critics begrudge Clarence Thomas his success.

Let me repeat that. It is almost as if these critics begrudge Clarence Thomas his success. He did not make it because of affirmative action. He made it on his own. He pulled himself up by his bootstraps. He now is a nominee for the highest court in the land and somehow he should feel guilty about his success.

Mr. President, I support the nomination of Clarence Thomas to the Supreme Court, and I support the nomination not because I am sure how he will decide any particular case—I might know how I hope he would decide those cases, but I am not sure—but because I believe his judicial philosophy is consistent with the judicial role envisioned by the Founding Fathers, that judges should interpret the law, not make it.

Clarence Thomas has been pilloried for stating that "Economic rights are protected—by the Constitution—as much as any other rights." But the protection of private property from the whims of government was a concept which was built into the Constitution by the Founding Fathers themselves. The fifth amendment specifically prohibits the taking of private property without just compensation. And the 14th amendment prohibits the taking of property without due process of law.

Therefore, if Thomas' detractors have problems with economic rights, they should direct their grievances against their real enemies, James Madison and Alexander Hamilton.

Clarence Thomas has been impugned for writings about racial quotas and his belief that people should be hired on the basis of merit, rather than the color of their skin. Thomas' own life stands as a moving example of the validity of this concept. This is what Clarence Thomas believes, but, Mr. President—and perhaps more importantly—this is also what the American people believe. The American people agree with Clarence Thomas.

The process of confirming a Supreme Court Justice has become a strange and curious animal. We have heard a lot over the past few days about the need for balance, balance on the Court.

Less than a decade and a half ago, when a liberal President was nominating liberal judges to a liberal Court, you did not hear a whole lot about the need for nominating conservatives in order to balance the Court. In fact, when confronted with some of the radical leftwing views of some of the Carter nominees, many of those most vociferous critics of Thomas' refusal to take positions on specific issues were denouncing what they called litmus test and singing a different tune.

Let us listen to some of that music. Speaking on the Senate floor on September 25, 1979, concerning the nomination of a controversial liberal Congressman Abner Mikva to be a judge on the D.C. Circuit Court of Appeals, the current distinguished chairman of the Senate Judiciary Committee laid out the standard which I believe is just as relevant today as it was under the Carter administration. "I believe," said Chairman BIDEN, "what is properly before us here as we consider Congressman Mikva's nomination is not the views that he has expressed on public issues as a Member of Congress, but rather the degree to which he possesses those attributes experience has been shown to be desirable in a judge, particularly the ability to be objective on the bench. To apply any other standard would be to disqualify from the judiciary virtually any public person who has been willing to take positions on judicial issues. Specifically, I do not believe elected officials should be disqualified for service on the Federal bench simply because during the course of their political careers they have advocated positions with which some seem have disagreed." Those remarks were made by Chairman BIDEN in 1979 regarding a liberal appointee.

The Senator from Massachusetts [Mr. KENNEDY] echoed these same sentiments during the same debate when he stated: "When an individual is nominated to the Federal bench the question for us to consider is not how he would or did write the law as a legislator. The question is whether he is willing and able to interpret the law as we and those before us have written it. The answer does not turn on politics; it turns on ability, sensitivity, and perhaps most importantly, integrity." Those remarks were made by Senator KENNEDY, one of the harshest critics today of conservative Judge Clarence Thomas.

Well, Mr. President, I agree with Senator KENNEDY. And furthermore, I believe that what is sauce for the goose is sauce for the gander. There is no difference between Abner Mikva and Clarence Thomas other than the fact that Clarence Thomas is not a denizen of the far left.

Just because we have a conservative President and conservative nominees does not mean that the congressional role has somehow been radically altered. This Senator, for one, is offended by organizations which first attached Thomas because of his opposition to abortion which now attack him because he refused, in his Judiciary Committee testimony, to speak out against abortion. Judge Robert Bork, one of the most distinguished scholars ever to be nominated for the Supreme Court, answered all of these questions—and he was lambasted for having prejudged the issues. The process has become a game in which groups are willing to use any argument necessary to destroy the reputation and career of a decent man because they believe he will not adjudicate in accordance with their views. That is a bad process and it ought not be adhered to.

Mr. President, it is hard to imagine what sort of nonliberal nominee would be acceptable to the liberal Washington interest groups. Who would it be? If a nominee has extensive writings and is candid with respect to his views, he is attacked for having prejudged the issue. If he has written little and refuses to comment on issues, he is attacked for being an unknown quantity. What can a nominee say that will satisfy these people? What if, for instance, in response to repeated demands that he endorse so-called constitutional rights which judges have pulled out of their hats, a Supreme Court nominee in Thomas' position had simply responded:

> It is emphatically the province and duty of the Judicial Department to say what the law is. * * * If two laws conflict with each other, the courts must decide on the operation of each. * * * This is of the very essence of judicial duty.

Clearly, such a neanderthal could never be confirmed by our enlightened Judiciary Committee. Such a mechanistic view of the law would surely deny a woman's right to choose—and would reverse three decades for civil rights advances.

So the Senate would reject this narrow-minded ultraconservative nominee. And, in the process, it would have rejected John Marshall for a seat on the Supreme Court and would have repudiated Marbury versus Madison.

Mr. President, if Thomas' detractors have problems with the Founding Fathers, they can always try to amend the Constitution. If they have problems with the choices made by the American

people through our democratic process, they can take their case to the electorate. But let us not scapegoat Thomas because he represents a convenient target for Washington interest groups who are out of touch with the popular will.

Mr. President, I am proud to support the nomination of Clarence Thomas as an associate justice of the U.S. Supreme Court and urge the Senate to act accordingly and put him on the bench.

Mr. CRANSTON. Mr. President, the vote to confirm an individual to assume a lifetime position on the Supreme Court is one of the most important votes that any Member of the Senate is ever called upon to cast. A Supreme Court Justice serves for life, is not directly accountable to the people, and affects the lives of millions of Americans and generations of future Americans.

Our Founders understood the significance and potential consequences of a nomination to the Supreme Court. The Founders knew that those called to serve on the Nation's highest court are entrusted with the responsibility of safeguarding the individual rights and liberties secured by the Constitution, particularly the Bill of Rights.

That is why they gave the Senate its advise-and-consent role and the responsibility to serve as a check and balance to the President's power to nominate. And, in my view, that is why there should be no presumption in favor of confirming a nominee simply because the President selects him.

I know that the Presiding Officer at the moment, the distinguished Senator from Wisconsin [Mr. KOHL], viewed his role on the Judiciary Committee as one totally independent of the President and of the executive branch. He voted his own conscience, and I think he made a very wise decision on that committee in voting against this nominee.

The burden is on the nominee to demonstrate to the Members of the Senate—who have the awesome responsibility to make a judgment on the nominee's qualifications to serve on the highest court of the land—that he or she possesses an understanding and commitment to the fundamental rights and liberties which are inherent in our Constitution and way of life.

Judge Thomas had the opportunity to meet that burden. Judge Thomas did not have to answer questions as to how he would rule in a specific case. He was never asked to do so. He was asked to share with the committee how he would approach fundamental issues. Judge Thomas' task was to instill confidence that he appropriately values our hard-won rights and liberties.

But Judge Thomas chose not to meet that challenge. Instead, he chose to disavow and disassociate. He asked that we evaluate him based solely on his brief tenure on the court of appeals and his 5 days of testimony. He asked that his prior statements raising concerns about his views on issues such as abortion, natural law, affirmative action, separation of powers, and congressional intent be disregarded. He sought to disavow statements and principles he espoused as a member of the Reagan and Bush administrations. But then he declined to give the Senate any insight into his constitutional philosophy.

The sparse content of the testimony offered before the Judiciary Committee served only to intensify the scrutiny of Judge Thomas' pre-judicial remarks. Judge Thomas conducted himself as if the presumption of suitability was in his favor rather than accepting that the burden of proof rests with him to establish his understanding of, and his commitment to, the concepts embodied in the spirit and words of the Constitution. Before his appearance before the Judiciary Committee, the odds were high that he would receive the support of a majority of the committee. His decision to refuse to answer in a forthright manner the questions posed to him has, rightfully, resulted in the growing tally against his nomination.

Mr. President, my responsibility in this vital process of advise and consent is not to take a leap of faith that a nominee is committed to protecting our valued rights and freedoms. I cannot ignore the positions a nominee articulated and the actions he took on important issues while a member of the executive branch. I cannot simply hope that a nominee will exhibit the qualities we most need in our Justices.

Mr. President, a nominee who seems to tailor his remarks to his audience, who would have us believe that he has never even discussed with anyone on Earth one of the most important issues of our time—choice—and who now claims to have no attachment to the ideas he embraced in the recent past, does not inspire confidence that the robe of the Justice will fit as well as Judge Thomas would have us believe.

I voted against Justice Souter because he took the position that Members of the U.S. Senate were not entitled to know his views or understand what legal philosophy he would apply in approaching important, fundamental issues such as a woman's right to choice in matters relating to abortion. Justice Souter's decisions during his first term—particularly his vote upholding the right of the Federal Government to prevent doctors from providing their patients information relating to their right to choose an abortion—suggests that my concerns about a nominee who is not willing to answer questions about individual liberties are well-founded. I will not vote to confirm a nominee to the Supreme Court who refuses to be forthcoming in the very process the Constitution says we in the Senate must carry out.

I think the nomination process, particularly in the committee but also on the floor, becomes a travesty when we are not given the opportunity to understand the philosophy of the nominee. And that travesty is an even greater problem when, as in the case of Justice Souter, and now Judge Thomas, we are presented a nominee whose record leaves so many questions.

We have not been given, in the cases of Judge Thomas and Justice Souter, a nominee with a distinguished and clear record on the issues, in general philosophical terms, that will come before the Court. And what record does exist fails to give us any significant clues or insights.

I hope we will return to the time when the President chooses nominees who have distinguished records that are very clear, that cannot be denied or concealed or changed in the course of the process.

I think the country will be better when we return to the situation we had in the past. Certainly, the Supreme Court will be better.

Mr. President, for these reasons I will vote against confirmation of the nomination of Clarence Thomas to sit on the Supreme Court of the United States.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. THURMOND. Mr. President, I would like to briefly respond to some comments which have been raised regarding Judge Thomas during the debate on his nomination.

First, Judge Thomas was questioned at length before the Judiciary Committee regarding the abortion issue. I have reexamined Judge Thomas' testimony on this matter. Judge Thomas testified that he had not debated the specific ruling in Roe versus Wade to the point of a conclusion regarding its outcome. He also made it very clear that, even if he had, he felt it inappropriate to discuss that opinion before the committee. I commend Judge Thomas for attempting to maintain his impartiality on controversial issues, such as abortion, that may come before the Court.

When asked about discussions of the Roe case between law students at Yale, he stated that he did not remember personally engaging in those discussions. Judge Thomas stated that since law school he has engaged in general discussion regarding the issues raised by Roe. He also testified that he has not formed, or expressed, an opinion on the outcome of that case. I believe a careful reading of Judiciary Committee hearing transcript will show that Judge Thomas stated that he did not

actively debate the legal basis for Roe to the point of forming an opinion on its outcome.

One other point I believe is relevant to this discussion. Judge Thomas has stated that he believes the Constitution protects the fundamental right of privacy. Mr. President, this is an important point which should be considered in this debate.

As well, it has been suggested that Judge Thomas selectively answered questions during his hearing on topics such as the death penalty and the use of victim impact statements and should, therefore, be willing to openly discuss abortion.

The question about the death penalty and victim impact statements were general and in those areas where the law is now well settled, and not in dispute.

I believe it is inappropriate now for a nominee to the Supreme Court to answer specific questions about unsettled cases or issues that may come before the Court. Each case must be decided upon the facts and questions of the law raised by that case after a judge has had time to fully contemplate a just decision. The impartiality and independence of the Court would be compromised if a nominee had to prejudge any issue that may come before him.

Mr. President, the topic of natural law was raised throughout the committee hearing and was touched upon during the debate. Some have criticized Judge Thomas because of his previous remarks on the use of natural law; namely, that his comments do not give them a clear understanding of Judge Thomas' judicial philosophy. Judge Thomas has stated that he does not believe that natural law should be relied upon in constitutional adjudication. His record on the District of Columbia circuit bench is clear that he has decided the issues based on constitutional interpretation and legislative intent, and not natural law.

Mr. President, I would like to briefly respond to the comments suggesting that Judge Thomas is insensitive to the rights of women and minorities. Nothing could be further from the truth. In fact, as Chairman of the EEOC, Judge Thomas was instrumental in helping women. During his tenure, the EEOC won monetary relief for victims of sex discrimination. Women benefited from over a total of $95 million in lawsuits pursued by the EEOC under Judge Thomas' leadership. I believe that his record in this area is a solid one. As well, during his tenure, lawsuits filed on behalf of victims of discrimination more than doubled. Some 3,300 lawsuits were filed and nearly $1 billion dollars in monetary benefits were obtained for those who had suffered discrimination. Additionally, Judge Thomas was influential in helping develop the position that sexual harassment claims were covered by title VII of the Civil Rights Act in the case of Meritor Savings Bank versus Vinson. The rhetoric by those opposing Judge Thomas is simply not supported by the facts of his record. I believe his action on behalf of women and minorities is highly commendable.

Mr. President, I thought it was important to clear up these points which were raised.

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

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

Mr. KENNEDY. Mr. President, in my remarks today, I want to address Judge Thomas' past statements and actions as a member of the executive branch, which raise grave concerns about his views on the separation of powers and the role of Congress in our constitutional structure.

In some instances, his views are a challenge to 200 years of precedent. His comments reflect an extraordinary degree of hostility toward the legislative branch of Government. His statements and actions display a strong inclination to exalt the executive branch in ways that ought to be of deep concern to every Member of this body.

Judge Thomas' approach to the separation of powers, if accepted by a majority of the Supreme Court, will undermine Congress ability to function effectively as the day-to-day voice of the American people in a wide variety of areas.

If the Justices of the Supreme Court tilt toward the President instead of fairly arbitrating our disputes, they can profoundly after our system of government, which depends on the existence of three separate and coequal branches. By adopting absurdly narrow interpretations of congressional statutes or deferring to minimally plausible executive branch interpretations which defy the clear intent of Congress and disregard the plain legislative history, the Court can effectively deny the legislative branch its constitutional power to make law.

Judge Thomas' record reveals many reasons to believe this is exactly what he will do as a member of the Supreme Court.

During his tenure at the EEOC, Judge Thomas had many bitter confrontations with Congress, which apparently left him extremely hostile to this body. Here are a few of the things he has publicly said about Congress:

> To put it simply, there is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business.
>
> Congress has been an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom.
>
> In obscure meetings, [members of Congress] browbeat, threaten, and harass agency heads to follow their lead. Thus Congress operates in the shadows, and then produces press releases to show what a fine job it has been doing.

Judge Thomas has called Members of Congress petty despots and has said that the institution is "out of control." He has said that many who go before congressional committees share a desire to tell Congress to go to hell. He has referred to GAO as "the lapdog of Congress."

Judge Thomas has also repeatedly condemned Congress' exercise of its oversight function. He has argued that a Senate Aging Committee investigation, which discovered that the EEOC has allowed the statute of limitations to expire in thousands of age discrimination cases, "disrupt[ed] civil rights enforcement." Without congressional intervention, thousands of older workers would have lost their federally protected right to be free from employment discrimination. Apparently, that fact did not demonstrate to Judge Thomas the need for the committee's investigation.

On a number of occasions, Judge Thomas praised Oliver North and condemned Congress' investigation of the Iran-Contra scandal. According to Judge Thomas, Oliver North "did a most effective job of exposing congressional irresponsibility. He forced [Congress'] hand, and revealed the extent to which their public persona is fake."

Even during the hearing, when virtually every statement he made was designed to avoid controversy, he said that he still believes that some oversight efforts go too far in micromanaging Federal agencies.

Yet Judge Thomas asks us to accept his view that he now respects Congress oversight function, and that he bears no bias or any other hard feeling against Congress because of past conflicts. He asked us to trust that as a Justice he will set aside his long-held policy beliefs and defer to Congress when interpreting statutes.

He asks us to ignore his sharp criticisms of virtually all race-conscious remedies for past discrimination.

He asks us to ignore his statements asserting that business rights deserve the same protection as individual rights or any other rights.

He asks us to ignore his hostile statements about the minimum wage, the Davis-Bacon Act, the Family and Medical Leave Act, entitlement programs, and the Departments of Labor, Commerce, and Agriculture.

Judge Thomas' record reveals that he may not be able to shed his past as easily as he asks us to believe. According to recent press reports, just 3 months ago Judge Thomas prepared a draft opinion in his first case on the D.C. Court of Appeals to raise a significant question of deference to Congress. Judge Thomas circulated his draft

opinion to other members of the court, but no further action was apparently taken after his nomination to the Supreme Court, and the opinion has not been made public.

This case, Lamprecht versus FCC, involved a challenge to Congress' decision to increase the number of women and minorities with scarce Federal broadcast licenses by requiring the FCC to grant qualified women and minorities some preference in awarding such licenses. Congress decided that such an increase would benefit all Americans by promoting diversity in broadcasting. In the case, the FCC had awarded a license to a woman, and the award was challenged by a competing applicant for the license on the ground that the statute directing the FCC to continue its preference policy was invalid. According to press reports, Judge Thomas' draft opinion accepted that argument, on the ground that Congress had offered inadequate evidence when passing the statute that awarding licenses to women would increase broadcasting diversity.

Last year, the Supreme Court upheld the congressional preference for minorities in Metro Broadcasting versus FCC. During the hearings, Judge Thomas specifically testified that he had no reason to disagree with the Court's decision in Metro Broadcasting. He also stated that he accepted Supreme Court rulings directing courts to give greater preference to congressional enactments than the State or local laws. But Judge Thomas never mentioned Lamprecht versus FCC in either of these exchanges, even though he obviously has been deeply involved in both aspects of the questions he was asked—his views on the statutory preference for women and minorities, and his views on the degree of deference courts must give to Congress.

It is not clear whether Judge Thomas' D.C. Circuit opinion will ever see the light of day. What is clear is that he was not entirely candid with the committee in discussing this issue, and that the open mind he professed to have on the Metro Broadcasting case may well have been much more closed than he led us to believe.

(Mr. BINGAMAN assumed the chair.)

Mr. KENNEDY. Mr. President, it is clear why Congress provided a preference for women and minorities in licensing broadcast stations. The fact of the matter is that minorities in this country have been a lot less able to formulate the capital needed to purchase broadcast stations, whether TV stations or radio stations. As time goes on, there are fewer and fewer frequencies remaining for television and radio stations for any individuals in this country. And the existing small number of stations owned by minorities, women, and disabled is striking.

It was with this problem in mind that Congress decided to give some degree of preference to minorities and women. There was a recognition by the Congress that diversity in this extremely important area of communication is advantageous to the United States as a society.

On the one hand, we see that the nominee apparently does not dispute the Supreme Court decision permitting some degree of recognition on the basis of race. The question now is whether that same recognition will be provided to women. The best information that has been made available in the press is that Judge Thomas did not believe that there was sufficient evidence for Congress to take that action, to provide the degree of recognition for women in our society that it provided for minorities.

But I think if any of us in any of our States was asked how many of the major radio stations, how many of the major television stations, owned by women in our communities, they would be hard pressed to mention many, or even a few. That certainly is true with regard to the major networks or Fox Broadcasting, or CNN, or others.

So it would have been entirely appropriate for the Judiciary Committee to delve into Judge Thomas' views on, and understanding of, the kind of discrimination women have experienced across this country in recent times. This issue is particularly important given his comments about the issue of affirmative action.

But by failing to mention the Lamprecht case, Judge Thomas left us to make a judgment on a very, very important issue that reflects on the kind of society that we are going to be with an important question unresolved. The Judiciary Committee and the Senate were really left in the dark on this issue.

In addition, Judge Thomas has expressed his agreement with Justice Scalia, one of the current Court's most conservative members, on several important and highly controversial issues.

After the Supreme Court decided in Johnson versus Santa Clara that an employer can use affirmative action to open its previously segregated work force to women, Judge Thomas condemned the majority opinion and expressed his hope that Justice Scalia's dissent would provide guidance for the lower courts and would form the basis for a future majority opinion.

In that case, the employee has 238 professional positions and not one woman professional employee.

When the employer went to fill the next job opening, it qualified people for the position, one of whom was a woman. The employer gave the job to the woman, and its decision was challenged by one of the other applicants, who had scored two points higher on a subjective interview—not on a written test—on a subjective interview. Two of the three members of the interview panel had previously worked with the woman applicant. One had refused to provide her necessary work clothing. He told her that she ought to wear her own clothes because coveralls were for men. The second referred to this woman as a rebel-rouser. There is clear evidence that two of the three individuals on that panel had expressed hostility toward the woman applicant, and still she had only scored two points on a subjective interview below the individual who challenged her selection. She was deemed to be qualified in every other respect, and there were no other women in any of those professional positions. The Supreme Court made the decision that the woman should be able to hold that job. Judge Thomas disagrees.

If we look back again at what his position allegedly is on set-asides for women, if we look back on his references to Thomas Sowell, where he commended Sowell's stereotyped descriptions of women in the work force, we must have serious doubts. Sowell apparently believes that a woman's place is in the home, and it should be in the home if that particular Woman chooses to be in the home. But if that woman needs or wants to work, she should not be held back on the basis that she is a woman.

That is what we are talking about. We are going to need justice when we are faced with questions about equal protections of the law. The Constitution promises equal protection of the law without regard to race, without regard to religion, without regard to gender. We want an individual who is going to be promoted to the Supreme Court who has that kind of core understanding of a key element of the 14th amendment.

Just as Judge Thomas sided with Justice Scalia or Johnson, so he sided with Justice Scalia on Morrison versus Olson. After the Supreme Court, Decided 7–1 in Morrison that Congress can constitutionally authorize a special independent prosecutor to investigate criminal wrongdoing by high-level Government officials, Judge Thomas praised Judge Scalia's dissent in glowing terms.

In a speech at Hofstra University Law School, Justice Scalia discussed his view of the proper use of legislative intent in judicial decisionmaking. According to Justice Scalia, courts should never look at legislative intent when interpreting statutes because, in his view, committee reports and floor debates are too contradictory and vague to provide an appropriate basis for judicial decisionmaking. Let every Member of the Senate who is going to be making their judgment know what Justice Scalia has stated about legislative intent in judicial decisionmaking.

According to Justice Scalia, who Judge Thomas has praised, courts

should never look at legislative intent when interpreting the statutes because, in his view, committee reports and floor debates are too contradictory and vague to provide an appropriate basis for judicial decisionmaking.

Rather, whenever a statute is not absolutely clear on its face, Judge Scalia believes the courts should defer to executive branch interpretations, even if those interpretations defy Congress' clear intent.

We know that Judge Thomas has sided with Justice Scalia on two critical issues concerning the separation of power between the executive and legislative branches. He may well side with Justice Scalia on the question of legislative intent.

If we vote to confirm Judge Thomas, we may well be condemning Congress to deal with every conceivable possibility in express statutory language, or let a hostile executive branch decide what our statutes mean.

Or take another example. The roles of the legislative and executive branches would be drastically altered if the Supreme Court gives the President the power to veto particular line items in appropriations bills, rather than requiring him to sign or veto the bills as a whole. The Republican Party platform explicitly states that the President already possesses this power, and Judge Thomas may well agree. In a 1987 speech, he described the line-item veto as within a range of concerns which "is coequal with the range of economic rights itself."

Judge Thomas has repeatedly stated that economic rights "are protected as much as any other rights" and "are so basic that the Founders did not even think it necessary to include them in the Constitution's text."

The current right-wing agenda includes developing a test case to take this issue to the Supreme Court. President Bush has apparently instructed his White House counsel and his Budget Director to find an appropriate test case.

With Judge Thomas on the Supreme Court, they are more likely to win it.

There are many reasons to be concerned by the prospect that Judge Thomas' views on the Constitution and the separation of powers may become the law of the land. There is, however, absolutely no reason to permit that to occur.

The Constitution gives the Senate and the President a shared role in deciding who sits on the Supreme Court. The Senate's advice and consent role is not subordinate to the President's role.

Indeed, the Constitution originally gave the Senate alone the power to appoint Supreme Court Justices. It was only at the last minute that the Framers modified this provision to share the responsibility between the President and the Senate.

The Framers, in making this last-minute change, once again recognized the benefit of the separation of powers and checks and balances. By dividing responsibility between the President and the Senate, the Framers ensured that each can stop any attempt by the other to stack the Court. But the system will not work unless each Member of this body exercises his constitutional responsibility independently to consider the President's nominee.

President Bush clearly did not rise above ideological considerations when he decided to nominate Judge Thomas, and the Senate has both the right and the duty to reject his confirmation if we feel that he is wrong for the Supreme Court.

If we confirm Judge Thomas despite the serious concerns raised by his record, there is little doubt that we will be acquiescing in the continued transfer of power away from Congress and into the hands of the President.

Mr. President, I ask unanimous consent that a more detailed analysis of Judge Thomas' view on executive power and the role of Congress be printed in the RECORD.

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

JUDGE THOMAS, EXECUTIVE POWER, AND THE ROLE OF CONGRESS

Judge Thomas' past statements and actions as a member of the Executive Branch raise troubling concerns about his views on the separation of powers and the role of Congress in our constitutional structure. Numerous statements demonstrate a harsh attitude toward Congress. He record indicates that he may have a narrow view of the circumstances under which Congress may investigate or restrain actions by Executive Branch officials, either through direct congressional oversight or through the use of special independent prosecutors. In addition, he has condemned Congress generally and has criticized it for exercising powers vested in the Executive under the Constitution. These views indicate that Judge Thomas may lack respect for Congress' role as a lawmaking body or, more fundamentally, that he may view much of what Congress does as unconstitutional.[1]

Although during his testimony before the Judiciary Committee Judge Thomas modified or abandoned many of his prior statements and stated that as judge he would set aside his personal views, his record still raises serious concerns about his views of the Executive, Congress, and the separation of powers.

I. CONGRESSIONAL OVERSIGHT

A. General statements

During Judge Thomas' tenure at the EEOC, his relations with Congress were often quite strained.[2] These conflicts apparently left Thomas quite hostile to Congress and caused him to criticize congressional oversight efforts in very strong terms. In speeches given during 1987 and 1988, he argued repeatedly that Congress, "has thrust the tough choices on the bureaucracy, which it dominates through its oversight functions"[3] and that congressional subcommittees "micro-manage the running of agencies."[4] Without naming names, he referred to members of Congress as "petty despots" and stated that Congress has been "an enormous obstacle to the positive enforcement of civil rights laws that protect individual freedom."[6] He also alleged that "[i]n obscure meetings, [Members of Congress] browbeat, threaten, and harass agency heads to follow their lead."[7] In Thomas view, "[t]o put it simply, there is little deliberation and even less wisdom in the manner in which the legislative branch conducts its business."[48]

In addition to these general criticisms, Thomas has criticized specific efforts by Congress to investigate Executive Branch actions.

B. The Oliver North investigation

In several articles and speeches, Thomas has praised Oliver North for exposing Congress' failures. In 1988 he stated:

"That [the] defense [of freedom] is still possible is seen in the testimony of Oliver North before the congressional Iran-contra committee. Partly disarmed by his attorneys' insistence on avoiding closed sessions, the committee beat an ignominious retreat before North's direct attack on it and, by extension, on all of Congress. This shows that the people, when not presented with distorted reporting by the media, do retain and act on their common sense and good judgment, and that members of Congress can listen if their attention is grabbed. Self-government need not be an illusion!"[9]

Thomas also stated that he thought North "did a most effective job of exposing congressional irresponsibility. He forced their hand, and revealed the extent to which their public persona is fake."[10]

C. The Senate Aging Committee's investigation of the lapsed age discrimination cases

During Judge Thomas' tenure at the EEOC, the Senate Aging Committee discovered that the EEOC had allowed the statute of limitations to expire in thousands of age discrimination cases. Initial data submitted by the EEOC dramatically understand the scope of the problem. The EEOC did not cooperate with the investigation to the Committee's satisfaction, and it therefore issued a subpoena to obtain certain records. Ultimately, Congress adopted remedial legislation to extend the statute of limitations in affected cases.

Thomas was very critical of the Senate investigation. In 1988, for example, he alleged that Congress was out of control and stated:

"To give a current example, my agency will be virtually shut down by a willful committee staffer, who has succeeded in getting a Senate Committee to subpoena volumes of EEOC records. It will take weeks of time, and cost in the hundreds of thousands of dollars, if not in the millions. Thus, a single unselected individual can disrupt civil rights enforcement—and all in the name of protecting rights."[11]

The fact that without congressional intervention, thousands of older workers would have lost their federally-protected right to be free from employment discrimination apparently did not cause Judge Thomas to respect the need for the Committee's investigation.

D. The Senate confirmation hearings

During the hearings, Judge Thomas attempted to distance himself from his harsh statements criticizing Congress. He stated that "the oversight function of Congress [is] very appropriate"[12] and that "sometimes those of us who have nominated and needed to be confirmed have deep regret[s] about negative comments about this body [Congress]."[13] He also claimed that he did "not think he condoned" Oliver North's actions.[14]

[1] Footnotes at end of article.

He did, however, admit that he still believes that some oversight efforts go "too far in micro-managing" federal agencies.[15] In addition, although he testified that "[e]ven in the speeches where I talk about oversight, I may talk about the flaws, but I also point out the importance of the legislative and oversight process."[16] His prior statements do not support this claim.

II. THOMAS' CRITICISM OF THE SUPREME COURT'S DECISION IN MORRISON VERSUS OLSON AND THE ROLE OF THE INDEPENDENT PROSECUTOR

In Morrison versus Olson, the Supreme Court upheld in a 7–1 opinion the constitutionally of appointing special Independent Counsels to investigate suspected criminal activity by high-ranking federal officials. The Court, in an opinion written by Chief Justice Rehnquist, held that Congress has the authority to create special prosecutors. Justice Scalia, the lone dissenter, argued that Congress has no such authority, no matter how serious the allegations of criminal activity by Executive branch officials.

In a 1988 speech, Judge Thomas stated the Morrison was the most important Supreme Court decision since Brown versus Board of Education. He criticized Rehnquist's decision, and commended Scallia' dissent. He stated:

"Unfortunately, conservative heroes such as the Chief Justice failed not only conservatives but all Americans in the most important Court case since Brown versus Board of Eduation. I refer of course to the independent counsel case, Morrision versus Olson. As we have seen in recent months, we can no longer rely on conservative figures to advance our cause. Our hearts and minds must support conservative principles and ideas. As Judge Lawrence Silberman concluded his opinion in his D.C. Circuit Court of Appeals opinion: "This is no abstract dispute concerning the doctrine of separation of powers. The rights of individuals are at stake.' Justice Antonin Scalia's remarkable dissent in the Supreme Court case points the way toward those principles and ideas. He indicates again how we might relate natural rights to democratic self-government and thus protect a regime of individual rights."[17]

During the hearings, Judge Thomas appeared to state that he does not now believe that the independent prosecutor is unconstitutional.[18] He argued that he was merely expressing his concern that a law enforcement officer, unrestrained by either of the political branches, might trample on individual rights.[19] However, he did not adequately explain why, if this was his only concern, he used such strong language condemning the decision and praising Justice Scalia's dissent—which argued that any law enforcement by persons outside the executive branch is unconstitutional. Moreover, he did not explain why the provision allowing the Attorney General to dismiss an independent prosecutor for cause would not be sufficient to prevent the abuses of individual rights he said he feared.[20]

Thomas explicitly stated that he was unfamiliar with, and had not intended to endorse, the view that the separation of powers doctrine should be used to curb government regulation of business, or to rule that the independence from the President of certain Executive Branch agencies is unconstitutional.[21] These positions are, however, key issues on the agenda of various right-wing groups whom Judge Thomas often addressed. In addition to issues such as the constitutionality of special prosecutors or the independence of quasi-executive agencies, that agenda includes (1) urging the President to assert the line item veto power; (2) rejecting the use of legislative history to construe statues on the theory that Congress speaks with too many voices to be clear, while accepting Executive Branch interpretations,[22] and (3) expanding the use of the President's "pocket veto" power to nullify Acts of Congress during any recess longer than three days.

III. THOMAS' CRITICISM OF CONGRESS' LAWMAKING ACTIVITIES

In a number of speeches and articles, Judge Thomas has argued that during the last few decades Congress has abandoned its role as a deliberative, law-making body and has transformed itself into a quasi-executive. For example, in 1988 he stated that "Congress no longer stands for a deliberative body which legislates for the common good or public interest. It has become a coalition of elites, reflecting various interest groups."[23]

In Thomas' view, members of Congress enact vague legislation which leaves difficult policy decisions to executive agencies and to the courts, and then mirco-manage the administrative process in order to promote the goals of the interest groups to which they are indebted, while avoiding paying the political price for their decisions.[24]

Thomas appears to believe that such activities are not only improperly instrusive—they are unconstitutional. He has argued that Congress' transformation from a law-making body to a quasi-executive has altered the constitutional role of the Executive and the courts and threatens the separation of powers.[25] Although his position is not entirely clear, he appears to argue that Congress may only enact statutes which control "the general conditions under which departments and agencies ought to operate" and that it must leave to the executive branch decisions about "how to adapt the general law to particular circumstances.[26]

If Thomas in fact believes that Congress acts unconstitutionally when it enacts specific legislation or engages in agency oversight, he would be obliged as a Supreme Court Justice to strike down the legislation or prohibit the oversight activity.

FOOTNOTES

[1] In addition to the issues described in this paper, Judge Thomas' record raises other areas of concern with respect to his view of the separation of powers. His failure while an Assistant Secretary in the Department of Education to comply with a court order may indicate that he has a limited view of an executive official's obligation to obey the direct commands of the judicial branch. His insistence on taking a very narrow view of Section 504 of the Rehabilitation Act (over the objection of Assistant Attorney General William Bradford Reynolds), his statement expressing hope that lower courts would be guided by the dissenting opinion in a landmark Title VII case, and some of his opinions as a Judge on the D.C. Circuit indicate that he may have a cramped view of congressional enactments and a tendency not to give effect to congressional intent when that intent conflicts with either the Administration's interpretation of a statute or with his own policy beliefs.

[2] Indeed, fourteen members of House committees and subcommittees (almost all of them Chairpersons) co-signed a 1989 letter denouncing Thomas for "an overall disdain for the rule of law." Letter to President Bush, July 17, 1989. Eleven of these members urged the Senate to reject Judge Thomas' 1990 nomination to the D.C. Circuit. Letter to Chairman Biden, Feb. 28, 1990. Twelve such members of the House have also urged the Senate to reject Thomas' nomination to the Supreme Court. *See* Hearing Transcript, Sept. 13, 1991, p. 95–96 (questioning of Senator Simon).

[3] Prepared text, Speech at Harvard University Federalist Society, Apr. 7, 1988, p. 13 (prepared text not delivered) ("Harvard Federalist Society").

[4] "The Modern Civil Rights Movement: Can a Regime of Individual Rights and the Rule of Law Survive?," Speech at the Tocqueville Forum, Wake Forest University, Apr. 18, 1988, p. 21 ("Tocqueville Forum").

[5] Harvard Federalist Society at 13.

[6] Tocqueville Forum at 20.

[7] Tocqueville Forum at 21.

[8] Speech to the Palm Beach Chamber of Commerce, May 18, 1988, p. 12 ("Palm Beach Chamber of Commerce"); Speech at Brandeis University, April 8, 1988, p. 4 ("Brandeis University") "Congress, the Bureaucracy, and the Enforcement of Civil Rights," Paper President to the Annual Meeting of the American Political Science Association, Sept. 3, 1987, p. 4 ("American Political Science Association"). Thomas has also condemned the General Accounting Office as the "lapdog of Congress." *See* Speech at Creighton Law School, Feb. 14, 1991, p. 6.

[9] Thomas, "Civil Rights as a Principle Versus Civil Rights as an Interest," p. 399–400, in *Assessing the Reagan Years* (D. Boaz ed.) (1988) ("Civil Rights as a Principle").

[10] Tocqueville Forum at 21. *See also* Thomas, "The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 Harv. J. Law & Pub. Pol. 69 (Winter 1989) ("The Higher Law Background"); Speech to the Federalist Society for Law and Public Policy Studies, University of Virginia School of Law, Charlottesville, Virginia, March 5, 1988, p. 13 ("Virginia Federalist Society"); Harvard Federalist Society at 13 ("[a]s Lt. Col. Oliver North made perfectly clear last summer, it is Congress that is out of control!").

[11] Virginia Federalist Society at 13; see also Tocqueville Forum at 21–22; "The Higher Law Background" at 69.

[12] Hearing Transcripts, Sept. 11, 1991 at 122; Sept. 12 at 13; Sept. 13 at 92, 93–94.

[13] Hearing Transcript, Sept. 11, at 162.

[14] Hearing Transcript, Sept. 13 at 92; see also Sept. 16 at 105–06.

[15] Hearing Transcript, Sept. 12 at 13.

[16] Hearing Transcript, Sept. 13, at 93–94.

[17] "How to talk About Civil Rights: Keep It Principled and Positive," Keynote Address Celebrating the Formation of the Pacific Research Institute's Civil Rights Task Force, Vista Hotel, pages 7–8 (Aug. 4, 1988) (emphasis in original).

[18] Hearing Transcript, Sept. 12 at 69, 73. His statements, however, are not entirely clear. On September 12 he stated: "I don't think my point of departure was that it was unconstitutional, although I disagreed and argued that the Scalia opinion was the better approach." Transcript at 69. Later in the exchange he agreed that Morrison "is a decided case," Transcript at 73, but again did not state that he agreed with the result. See also Transcript, Sept. 13 at 17.

[19] Hearing Transcript, Sept. 12 at 29, 35, 70, 72; Sept. 13 at 15–17. Thomas also claimed that he commended Justice Scalia's opinion because it showed how "we might relate natural rights to democratic self-government." *Id.*, Sept. 12 at 31.

[20] *See* Hearing Transcript, Sept. 12 at 72.

[21] Hearing Transcript, Sept. 16 at 153–60.

[22] The Supreme Court's handling of the "gag rule"/abortion dispute is a perfect example of this aspect of the issue. In its final years, the Reagan Administration reversed its longstanding interpretation of Title IX, the Family Planning Act, and promulgated the gag rule as a regulation purporting to "interpret" that statute. The Supreme Court north Rust versus Sullivan sustained the regulation as a valid interpretation of Congress' intent. Now, to reject the gag rule, Congress must pass a new statute and override a likely Presidential veto.

[23] Tocqueville Forum at 22. At the hearings, Thomas testified that "I think I said [this] in the context of saying that Congress was at its best when it was legislating on great moral issues." Hearing Transcript, Sept. 12 at 14. The speech, however, does not place the comment in that context.

[24] *See* Palm Beach Chamber of Commerce at 15–16; Brandeis University at 6, 11–13; American Political Science Association at 5, 11–13, 17–18, 20. *See also* Virginia Federalist Society at 13; "The Higher Law Background" at 69.

[25] Palm Beach Chamber of Commerce at 10–27; Brandeis University at 3–14; American Political Science Association at 3–21. *See also* "Civil rights as a Principle" at 397–98.

[26] Palm Beach Chamber of Commerce at 11; Brandeis University at 4; American Political Science Association at 4.

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

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

Mr. DOLE. Mr. President, was leader time reserved?

The PRESIDING OFFICER. Yes.

THE BLOCKADE OF DUBROVNIK, CROATIA

Mr. DOLE. Mr. President, I was just on the telephone—I think it would be of interest of my colleagues—with the mayor of Dubrovnik in Croatia, Zeljko Sikic.

He was just calling frantically to get in touch with someone in America with a plea for help for Dubrovnik's community of 70,000 people. Bombs were dropping in the city as we spoke just 30 seconds ago. There is a total blockade by the Yugoslav army and the Serbs: They have cut off their water supply; they are burning their forests, bombing their churches. This mayor is just reaching out to the world for help. People were being killed as we spoke on the telephone.

I said I did not know what I could do, but that I will go immediately to the Senate floor and let people know of your telephone call and of your plea for help. This is happening all over Croatia.

I know there are deep hostilities and long-held hatreds between the Serbs and the Croats. But something must be done, some way must be found to bring the fighting to an end and to end this quest by the hard-line Communist leader, one of the last in the world. Mr. Milosevic, the Serbian leader, is using the Yugoslav army, and it is not even a fair fight. They do not have any airplanes in Dubrovnik. They do not have any tanks. They are being bombed from the air; they are being blockaded by sea. And it is all part of Milosevic's effort to have a "Greater Serbia."

Maybe my colleagues have ideas on how we can bring this tragedy to an end—everybody else is heading toward peace but Milosevic wants war. It is a very serious matter. I urge my colleagues on both sides to take a look at what is happening to what used to be Yugoslavia, especially if you have any Albanians in your State, any Slovenians in your State, any Croatians in your State, or any Serbians in your State—because there are a lot of Serbians who do not agree with Milosevic, whose actions run counter to everything that is happening around the world.

Mr. President, I promised the mayor I would make that statement.

EXTENDED BENEFITS LEGISLATION

SEPTEMBER'S UNEMPLOYMENT FIGURES

Mr. DOLE. Mr. President, as President Bush noted in his news conference earlier today, some encouraging news came this morning with the report that September's unemployment rate dropped to 6.7 percent.

While this rate is still unacceptably high and I hope very much we see further improvement, it does appear to indicate a leveling off during the last couple of months and the beginning of a downward trend consistent with signs of economic recovery.

ACTION SPEAKS LOUDER THAN WORDS

I heard a bunch of fancy speeches from the other side of the aisle this morning that seemed to indicate concern for the unemployed and passing extended benefits legislation.

But let us be frank, Mr. President, action speaks louder than words. It seems that each time the democrats send extended benefits legislation to the President, they make it worse, not better. Their first bill increased the deficit $5.8 billion and now they want to increase it by $6.2 billion.

WHERE IS THE ACCOUNTABILITY?

Unlike the proponents of the conference report, the President is sticking to his promise to abide by the budget agreement. The commitment of those who support the conference report to the budget agreement would appear to extend only as far as its political utility. Apparently for them, its utility has passed.

I ask where the accountability is? Is it that hard to say we agreed to pay for new programs and that we will stick by that promise because that is what is best for America?.

The one thing the American people understand is that you have to pay for things and that is what my alternative does. The alternative offered by Senators DURENBERGER and BURNS also pays for itself.

REPUBLICAN ALTERNATIVES

The President has said he would sign the Dole et al. alternative. He has said that before and he repeated it in no uncertain terms this morning during a news conference.

He has said he will veto the conference report because it is a tax on the American economy just when we continue to see encouraging signs.

Personally, Mr. President, I do not see what is taking so long to get the conference report to the White House so that we can start debating serious extended benefits legislation such as the alternatives we have offered.

I have seen bills move out of here quickly before, and the American people should be asking themselves why, when the House and the Senate passed the legislation last Tuesday, the bill has still not reached the House for Signature—let alone made its way down Pennsylvania Avenue.

The answer to that question is politics, and the fact that my colleagues on the other side of the aisle don't want to have to cut into next week's recess to work out a responsible piece of legislation with this side of the aisle.

They just want showdowns with President Bush. But while some Democrats are chuckling about trying to put the President in a tough spot, unemployed Americans are not laughing.

UNANIMOUS CONSENT TO BRING UP DOLE ALTERNATIVE

Before the day is out, Mr. President, I will seek unanimous consent to bring up the alternative offered by myself, Senators DOMENICI, ROTH, DANFORTH, BOND, and others.

I know that this proposal probably doesn't please a lot of Members on the other side of the aisle because it is a Republican alternative. Indeed, the other side of the aisle hasn't even bothered to offer suggestions to a bill that the President has said he would sign instantly.

In my book, that does not look like a lot of concern for the unemployed, and I think the unemployed workers should be asking where the beef is behind those great speeches we heard this morning.

PARITY FOR MILITARY PERSONNEL

Mr. President, I just want to take a moment to reply to earlier statements made by the Senator from Tennessee [Mr. SASSER].

The Dole et al. proposal provides for complete parity of treatment for unemployment extended benefits between military and civilian personnel.

The Senator from Tennessee suggests that our proposal hurts veterans returning from the Persian Gulf or other military personnel who have bravely and proudly served this country.

It is obvious to me that the other side of the aisle has not even bothered to read our alternative, which, based on other statements I have head, does not really surprise me.

Identical to standards for the civilian work force, our proposal provides 26 weeks of benefits to those involuntarily separated from the service and no benefits to those who voluntarily choose to leave the service, such as taking a new job in the private sector. This is what civilian workers get, and my proposal ups benefits for military personnel to make them consistent.

I also want to stress the point that our proposal would provide a full 26 weeks of benefits to those separated from the service due to defense downsizing because the denial of the right to reenlist or to sign up for additional service is considered an involuntary separation.

So, before criticisms are lobbed against our proposal by the other side of the aisle, let us at least get our facts straight.

The American people—particularly those who are unemployed—deserve to

get the truth rather than an earful of political rhetoric.

Mr. President, to reiterate, I have just watched President Bush's news conference, and there are words of encouraging news this morning about unemployment, which dropped to 6.7 percent. It is still too high, insufferably high, but it does give some indication it may be leveling off. Maybe this will be the beginning of a downward trend.

I also heard a bunch of statements this morning that indicated concern for the unemployed and passing the extended benefits legislation. Let us be frank, Mr. President. Actions speak louder than words.

Each time we have this extension of unemployment benefits debate, we have already sent one bill to the President. He signed the bill, but said it is not an emergency. So now we are about to send another bill to the President. I do not know why we have not sent it by now. People are out of work and are waiting for checks, and I am told by the enrolling clerk that they are not even going to send the bill down to the President until next week. I would think my Democratic friends would insist that this bill go to the President today, so he can either sign it or veto it—he is going to veto it—and let us bring it back to the Senate and to the House early next week, no later than Tuesday evening next week in the Senate, to see if it is going to be sustained. If it is sustained, we ought to do something else very quickly.

We have two options, in my view: We can pay for it in the Dole-Domenici-Roth-Danforth-Bond-Seymour, et al., proposal, or we can charge it up to our grandchildren with the so-called Bentsen proposal of $6.2 billion. Ours is less generous, because we pay for it. It is about $2 billion.

It seems to me that, as I have said on two successive days, people are out of work and probably do not know many of us, and they have not been watching C–SPAN or hanging on every word we say on the Senate floor. They do not care whether it is Democratic or Republican, or whether it is a paid-for or not-paid-for plan, but they would like to have benefits. Some of these people need the benefits. They needed them a month ago. It has been 34 days now since an alternative we offered would have started providing benefits. It paid for itself. I do not know why we criticize something that we pay for in this body. I think we ought to be elated that we found a way to pay for it. We are going to give benefits, 6 to 10 weeks.

So I want to thank the President of the United States for, first of all, indicating that he will sign this bill, the alternative, the one that pays for itself, pay as you go. If the benefits run out, we will find a way to pay for more, and pay for it.

I say to my friend that I do not think most people who are out of work, trying to feed their families, seriously care whether we are Democrats or Republicans. They are probably tired of all of us. So maybe we can sit down together and do something. The President is not going to budge, and if the Democrats are not going to budge, then we have an impasse. I have to believe there is somewhere in the middle where we can work it out.

I want to take a moment to reply to some earlier statements made by the Senator from Tennessee this morning, Senator SASSER, and I think Senator DOMENICI may later, that we did not take care of those who served in the gulf. Well, some of us voted to indicate we had confidence that we could win in the Persian Gulf. He said our proposal hurts veterans returning from the gulf who bravely and proudly served their country. Some of us voted so they could do that, and some voted the other way. The Senator from Tennessee was one of those.

It is obvious to me that the other side of the aisle has not yet been bothered to read our alternative, which, based on other statements I have heard, does not really surprise me. We provide what is identical to the standard in the civilian work force: 26 weeks of benefits to those who are involuntarily separated from the service—and no benefits to those who voluntarily choose to leave the service, such as taking a new job in the private sector. The involuntary get 26 weeks. This is precisely what civilian workers get, and my proposal of benefits to military personnel is to make them consistent. The allegation of the Senator from Tennessee is a nonstarter. We give a full 26 weeks of benefits to those who are separated from the service due to defense downsizing, because of denial of the right to reenlist or to sign up for additional service. That is considered to be an involuntary separation by us, and you get 26 weeks. So I just say, before we start taking it apart, people ought to study it.

I finally say that I hope we can get some benefits flowing. Before the day is out, I serve notice now that I will come to the floor and will ask unanimous consent that the Finance Committee be discharged from further consideration of the Dole-Domenici-Danforth-Seymour-Roth-Bond proposal, and that we have immediate action on it, pass it today by a voice vote, so it will be in the House on Monday, and they can pass it and send it to the President. He will sign that bill, and before the end of next week, we will be having unemployment extended benefits going to people who need them. I will make the same request on Monday, and I will make the same request on Tuesday, and every day we are in session next week. I hope there will not be any objection. We want to send the President a responsible package that pays for itself, and we have the program. Let us not charge it to our children or our grandchildren. I think that is the big difference between the two proposals.

So, Mr. President, I will make that request, and I will notify the majority leader before I come to the floor to do that, so he will be properly apprised. And there will be no effort to surprise anybody from my standpoint.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I say to my friend from Nebraska, who, I assume, is waiting to speak, that I will not speak long.

Mr. President, let me start by inserting an editorial from the New York Times on October 3 in the RECORD. I do not think the New York Times is a paper that usually supports Republicans or Republican ideas. I do not think that they would be for a position on unemployment compensation that would be in the adverse interest of working men and women. I am going to take one sentence out and then put it in the RECORD. "If you want more domestic spending," Democrats, "find the money to pay for it." I ask unanimous consent that the article be printed in the RECORD at this time.

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

A STANDOFF WON'T HELP THE JOBLESS

The distress of America's long-term unemployed offers a strong argument for reworking last year's Federal budget pact. But unless the Democrats are prepared to brace the overall budget issue head on, their $6.4 billion bill to extend unemployment benefits won't fly.

President Bush and Congress agreed in good faith to abide by specific caps on defense and nondefense spending, and not to increase either category without offsetting cuts or new revenues. Nor may they rob one category to fatten the other.

With Communism's collapse, defense savings could be applied to domestic needs without worsening the deficit. But absent a renegotiation that the Democrats seem reluctant to broach, the budget agreement still holds: If you want more domestic spending, find the money to pay for it.

The Democratic unemployment insurance bill approved by Congress provides up to 20 weeks of additional coverage beyond the basic 26, and expires next July. The proper way to pay for it would be to raise the tax employers already pay for the basic program. The President favors fewer additional weeks, and other funding. But the Democrats' bill skirts the issue by declaring an emergency, not subject to pay-as-you-go.

The Democrats tried a similar device in an earlier bill, extending benefits if the President declared an emergency; Mr. Bush refused to take the bait. With the emergency declaration now built in, he says he will veto the new bill.

House support for this bill was easily enough to override the veto, but the Senate's majority was two votes short. It remains to be seen whether Republicans who voted against the measure can be persuaded to switch. The September unemployment report, due Friday, could affect the vote.

The larger issue—renegotiating the budget pact in the light of fundamentally changed circumstances—will take time to resolve, when and if it is joined. The immediate issue is to provide for the unemployed within the existing rules. The worst of the recession may be past, but with new layoffs coming every day, the outlook for workers laid off months ago remains bleak. If the President's veto sticks, they will still need help.

Mr. DOMENICI. The editorial says a 5-year agreement between the President and Congress was entered into. A deal is a deal; an agreement is an agreement. But more so, it is now the law. Essentially, that law says that unless Congress and the President declare an emergency, you have to pay for any new program that you start in the Congress. We did not distinguish, nor did Congress ask us to distinguish, what kind of new programs we might start. It just said, if you start a new entitlement program, pay for it. Well, I regret to say that the Democrats apparently want to change the Budget Act all by themselves, unilaterally, and claim that they are doing that in the interest of the unemployed.

Mr. President, if we do it now, we will do it any time and for anything that comes along for the next 4 years, and there will be no budget restraint. We will add billions to our grandchildren's budget payment book. And, in this case, it appears that those who want the Democratic proposal are not even sure they want it now. It seems that they may want an issue, or they may want to prove they are right. But I suggest that the people who need unemployment compensation—because it has run out and they are entitled to it—are not interested in who wins.

They want an extension. Mr. President, the Dole-Domenici bill extends unemployment for all of those people that are desperately in need of it, and it pays for itself the way it is written. I do not hear arguments about how we pay for it because now the Congressional Budget Office says it is right, it is a zero balanced bill. So why is this not an urgency, emergency, according to that side of the aisle, why are they not sending the bill to the President? It passed here, it passed the House. It is ready to go.

The bill being touted is the leadership's solution to this problem and that Republicans do not care. Why don't they do what is natural in a bill like this and send it to the President? I could not believe that it was not already there today. I guarantee you, if it was a bill they really wanted, it would be there, be there already.

And the President has said I will make the issue forthwith. Send it, I will veto it. Have your votes on whether you are going to sustain me or not. But pass another bill if you do not override me. Send me a bill I can sign. Let us get the unemployment compensation extended.

Here we sit blaming him, blaming us, when all along there is a bill that the Democratic leadership will not send to him, will not finalize and we cannot get, ourselves, passed because we do not control the Senate or the House.

I am not going to talk very much about the details of the bill other than to say that if it would have been passed when we suggested it, it would have been signed. And so everyone will know time is awasting, unemployed people are not getting their benefit—there would already have been 5 weeks of benefits, where they qualified, under the Dole-Domenici bill.

But the first time through it was the first game of chicken. We will put it on the President's back. If he does not declare an emergency we will blame him. Now, today, we let time pass and we cannot even find out when this bill will go to the President.

Incidentally, as of now, so those who are interested enough to be listening will know, this Senate is supposed to go out for a recess Tuesday, next week. You see if that veto does not happen before that point in time, then we will not even have a chance to override the President until the next week. And I would ask who is holding up unemployment? It does not seem to me that it is Senator DOLE.

So I agree with him. We ought to ask consent to discharge the Dole-Domenici bill and bring it to the Senate floor so we can vote on it. And we ought to ask today, and we ought to ask Monday, and we ought to ask Tuesday, and maybe somebody will understand that the bill that is proposed by that side of the aisle is not going to be law.

And if you want nothing rather than that, then you have to take the consequences, that the working men and women know you were the cause of not extending benefits because the President will sign a bill, it is a good bill. And if you need to do another one you can do it in a couple of months. But it is a good bill and it is sound and it is paid for, and we are not, as the editorial said, starting a new program and not paying for it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

YUGOSLAVIA

Mr. EXON. Mr. President, I came to the floor to deliver a speech on my decision on the Supreme Court nominee. It so happened that I came to the floor just before the minority leader began his talk about the extremely difficult situation in Yugoslavia today.

Indeed, in 35 minutes I am meeting with a native citizen of Yugoslavia who has since become an American citizen, who has just, within the last few days, returned after being detained when he went back over there to try and lend some balance and support to those who were trying to resolve the crisis.

And it is indeed a crisis over there and I appreciate very much the fact that the minority leader came on the floor and indicated his tragic conversation with a mayor of a city in that very troubled country.

The minority leader asked for comments and suggestions on how we might be helpful. I have publicly asked that now of the President of the United States as to what role, if any, we should play in that ongoing tragedy.

Once again, I may know more about this after I hear firsthand from a Nebraskan who has just come back from that troubled country. But let us be cautious. Troubling as that is, let us not get ourselves further into the proposition that the United States of American can be the police force of the world, that more and more by recent events that may be stamped indelibly on the minds of too many countries around the world.

Having said that, I would also caution, Mr. President, against a growing feeling, probably in the United Nations, that the United States of America has the power and the will to become the police force of the United Nations which essentially it was in the gulf war.

Foreign entanglements all throughout our history have been something that we have talked about. Sometimes we made the right decisions; sometimes we made the wrong decisions.

Certainly I am not an isolationist that thinks we should never do anything in parts of the world. I only exercised a statement of caution in this regard. And rather than asking Senators of the United States what they want to do about it, I suspect that the question best rests with the Commander in Chief, the President of the United States, on whether we are going to do anything, or whether we should do anything. The first initiative in that regard I suggest should come from the President.

THE UNEMPLOYMENT COMPENSATION BILL

Mr. EXON. Now, Mr. President, I also listened to some very interesting, if not totally factual, comments from the minority leader and the distinguished Senator from New Mexico with regard to the unemployment bill.

Of course, there is no political connotation with this whatsoever. It is just an academic address to what we should and should not do.

Once again I suggest that we are not going to solve the problems around the world, nor are we going to solve the problems domestically with millions of people being unemployed during this recession, which is not over despite the fact that the administration as long as 6 months ago said, well, it is over, it is all up from here.

It is not all up from here and everyone knows that who understands the

situation. If you want to get on the floor of the U.S. Senate and blame the Democrats as a group for all the evils that presently exists with our fiscal mismanagement, then that is one thing. If you want to float a flag or a balloon that somehow the President and the Republicans are really the ones that are concerned about passing onto our children and grandchildren the enormous debt that has accrued—I did not intend to make a political talk on this matter.

Suffice it to say that when we had the last Democratic President of the United States, we had a debt of less than $1 trillion. Today that debt is $3.6 trillion. It is going to over $4 trillion within the next year, and the famed budget summit that I hear so much about on the floor of this Senate as a restraint is not a restraint. It is a phony piece of legislation, and I voted against it. And I declare again now that that famed budget summit the Democrats and Republicans were involved in under the leadership of the President at Andrews Air Force Base was a phony deal.

Therefore, I do not take much comfort in the fact, if we do not do something about unemployment, that that is going to solve the problem and make the salient point that the Republicans are indeed going to lead the way to a balanced fiscal course of action for the United States of America.

I was somewhat shocked, Mr. President, when I heard some of the statements that were just made. I would agree with the minority leader that it is entirely proper and wise to have the bill that was passed and enrolled acted upon promptly, to give the President an opportunity to exercise his veto, which he has every right to do as the President of the United States, and then come back and start all over again. But when I heard the talk about alleging that the Democrats and the Democratic leadership were causing the delay and causing the harm to all these troubled people who are unemployed, I was amazed.

I am further amazed that some people on this floor seem to have forgotten that the President of the United States a short few weeks ago signed into law—signed into law, Mr. President—a Democratic-led and sponsored bill to address this problem. In signing that into law, one would have to assume that the President of the United States felt it was a good piece of legislation. The reason, though, that it did not become effective, I would point out, is that the President of the United States simply, while signing the law, neglected and specifically said he would not sign the executive order that would be necessary to allow the measure to go forward.

So what we have now, Mr. President, contrary to what has been said on the floor, is the President of the United States signed into law the identical bill that we are talking about enrolling and sending to the President. If the President thought that bill was so bad, why did he sign it?

Of course, it is politics. It is raw and simple politics. And I may be misinformed, but I had never heard of the famed Dole-Domenici, et al., compromise bill that would be a pay-as-you-go maneuver until after it was obvious that we were going to pass some kind of a bill in the Congress of the United States.

I also think it is most amusing, Mr. President, that we talk about budget busting.

I was trying to explain this to my wife the other night. She has a pretty keen interest and a pretty keen understanding of Government, but she was puzzled about all of this. She said, "Republicans are saying you are going to bust the budget."

I said, "Yes, that is what they are saying."

"But," she said, "isn't it true that there is already $8 billion in a fund designed for the exact situation that we find ourselves in today? That money has been paid in by employers around the United States over a period of years. Isn't it true that there is $8 billion in that fund now? Isn't it true that this bill that the Republicans are alleging is wasteful spending would only spend $6 billion of that $8 billion in the trust fund?"

And I said, "That's right."

Then she said, "Well, how is it busting the budget?"

I said, "That is the most misunderstood or best-kept secret in the United States of America today."

It is not only with regard to that $8 billion trust fund, but it is all of the other trust funds that we have, including Social Security that this administration has ignored.

If there is any budget-busting allegation with regard to the bill in question, it is because the $8 billion in the trust fund, that therefore would not affect the budget whatsoever, has already been spent on other programs. It is just like the Social Security trust fund.

The people of the United States think a trust fund means something. I have said time and time again on this floor that there are no funds and there is very little trust. And yet we hear: "Those irresponsible Democrats are going about their usual irresponsible ways in trying to meet the needs of society."

The key question that I would like to have answered is, why was it, if the President is as concerned as he seems to now be and now solidly behind the belated proposed known as Dole-Domenici, et al., that there was nothing but silence, and an argument from the President of the United States and others of his political affiliation on this floor that there was simply no need for any kind—any kind—of relief or additional benefits for the unemployed?

Well, at least we brought them this far. The key question comes down, Mr. President, to a suggestion that I made earlier. If the President is concerned, why does the President not simply issue the Executive order to place right now, this afternoon, in effect the unemployment benefits extension that the Congress previously acted upon and that the President of the United States signed into law?

I am not saying directly that there is any politics involved here, but at least I raise a question.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with consideration of the nomination.

Mr. EXON. Mr. President, from my experience as Governor of the State of Nebraska as the appointing official for State judges, through my responsibilities in the U.S. Senate as part of the confirmation process for Federal judges, I have always felt a heavy responsibility to reach the best judgment possible on such matters. The individuals suggested for judicial positions must meet qualification tests in a number of areas, not just one. Few have met all of the criteria of the extensive panorama of tests that I have applied to each potential jurist. Perfection in all our actions and decisions as we pass through life is a worthy but unattainable goal. The same is true of those who serve on the Federal bench.

Judges face especially difficult and vital decisions affecting people over a period of years on a wide range of issues. They dispense justice and we dare not submit them to anything but the greatest scrutiny.

If there is a single ideal requirement for the judiciary, it is balance. The political system that we have employed in the selection process does not well lend itself to that worthy goal. In reviewing the report from the Judiciary Committee I noted with particular interest the references to this concern by Chairman BIDEN. Yes, it could be alleged that previous Supreme Courts have obviously had a bent far different from the present one. Two wrongs do not make a right and I would prefer a more balanced court philosophically.

I am convinced that the present administration and the one preceding it have gone more doctrinaire and strident in their nominees at every level of the Federal bench that any others. Generally the litmus test on strongly held conservative viewpoints has been applied. So much for balance. Indeed the current Justice Department has dramatically stepped up its political involvement in the process. But the

people have overwhelmingly supported the last two Presidents and evidently they are satisfied with the result. I am very concerned and may be addressing the process of selecting Federal judges at a subsequent time.

But the challenge today is to face the situation with reality and make the best decisions possible.

With regard to the current nominee, there were early surprises that reflect on my increasing concern for the process.

The President, supposedly devoid of all political or quota considerations, proudly announced his nominee as the best man for the job on the merits for the vacancy. This pleased me a great deal.

Since them, via the examination process, the truth has come to light. I would expect that there are few, if any, who believe what the President told the people of the United States as I have just quoted him. Maybe the President just misspoke or got carried away with his rhetoric over his "find." I do not buy for a moment what at best was an overstatement. It is my hope that the President does not come into possession of a hatchet because it might endanger the survival of every cherry tree in the Potomac Valley if Presidential history repeats itself. Confessions afterward could not restore the forest.

After a personal interview with Judge Thomas some time ago, I said I was inclined to support the nominee pending the outcome of the hearings and my review of the findings of the Judiciary Committee. I was surprised that he was not approved by the committee but my review of their findings have shown me their deliberation and carefully studied conclusions were difficult if not tortured. I salute all committee members of their studious efforts to reach their individual and collective conclusions.

I gathered the distinct conclusion that the committee did not agree that the best person has been selected but at least half of the committee felt he was qualified as did the American Bar Association.

My personal evaluation of Judge Thomas is that he is qualified. During my personal meeting with him, I was impressed with his academic credentials intelligence, determination, and family values. Indeed, he is an American success story by any measurement. It is certainly true that he does not have extensive courtroom or trial experience as a lawyer, and little if any in the Federal courts. There have been others, however, with similar limited private practice who have subsequently served in the courts with distinction.

It is my view that Judge Thomas' background and very human personal experiences would make him intellectually incapable of being other than a thoughtful and independent-minded jurist whose positions on issues could not be predicted in advance. He may well turn out to be a keen disappointment to some of his most vocal supporters, and a happy surprise to some of his more vocal opponents.

One member of the Judiciary Committee challenged other Senators to study the facts and vote their conscience. I have done that. Judge Thomas has demonstrated to me that he has judicial temperament, honesty, talent, academic credentials, fairness, and fitness for the Supreme Court of this land, notwithstanding what I consider an unfortunate oversell of his credentials by the President. In my view, he is qualified and I will support his nomination with my vote.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I had the pleasure of working with the distinguished Senator from Nebraska. He is the chairman of our Strategic Subcommittee, and I want to commend him for the fine work he has done on armed services on that subcommittee. I want to commend him for the conclusion he reached on Judge Thomas. He has reached the right conclusion.

Thank you very much.

Mr. EXON. Mr. President, I thank my friend and working partner on a whole series of issues, the distinguished former President pro tempore of the Senate, and now a very close worker with me on the whole matter of national defense, and I thank him so very kindly for his remarks.

Mr. THURMOND. Mr. President, I have already spoken on Judge Thomas this morning and answered some criticism of him. I think he is an outstanding candidate who will make the best Supreme Court Justice. I wish, now, to make a statement on another subject.

Mr. President, I ask unanimous consent to proceed as in morning business.

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

ALCOHOLISM IN AMERICA

Mr. THURMOND. Mr. President, in today's world of drive-by shootings and adolescent drug dealers, where crack cocaine and other illegal drugs are available on playgrounds as well as street corners, it is all too easy to forget that our Nation's No. 1 drug problem is alcohol abuse. Although it rarely makes the morning headlines or the evening news, alcohol is the most widely used and abused drug in this country affecting the lives of millions of Americans. Alcohol taken to excess dulls the bright minds of our youth, robs our artists of inspiration and prematurely takes the lives of thousands of Americans each year.

On Monday of this week the Department of Health and Human Services released the results of a Federal survey on alcoholism. This survey, conducted by the National Center for Health Statistics and the National Institute on Alcohol Abuse and Alcoholism, shows that alcohol affects even more Americans than was previously thought.

According to the survey, 76 million Americans—about 43 percent of the adult population of the United States—have been exposed to alcoholism in their families. Almost one in five Americans lived with an alcoholic growing up, and about 38 percent of adults in this country have a blood relative who is an alcoholic or problem drinker. In addition, almost 10 percent of adults have been married to or in a long-term relationship with an alcoholic or problem drinker, and alcohol appears to play a significant role in marital problems.

Mr. President, in spite of the strong evidence of the destructive effects of alcohol, many Americans lack even a basic knowledge of the possible consequences of drinking. These same Americans, however, are well aware of the numerous alcoholic beverages available at the corner liquor store. Like the rest of us, they are constantly bombarded with advertisements touting the virtues of various alcoholic beverages and strongly implying that to have fun, you have to drink.

Alcohol advertising remains the primary, if not the only source of alcohol education to which most Americans are exposed. The alcoholic beverage industry spends over $2 billion a year encouraging American consumers to purchase their products, with many of the ads specifically targeting young people.

Alcohol ads paint a glamorous and seductive picture of drinking, linking it with precisely those attributes and qualities—happiness, success, sexual prowess, athletic ability—that young adults find desirable. Ironically, these are the same qualities that alcohol abuse can diminish or destroy.

In an attempt to help educate Americans about the possible dangers of drinking, I have introduced legislation—S. 664, the Alcoholic Beverage Advertising Act of 1991—that would require alcoholic beverage advertisements to carry health warning messages. The bill provides for five rotating health messages, which would be included in all alcoholic beverage advertisements and promotional displays in both print and broadcast media. The measure also provides for the establishment of toll-free numbers which would provide information on drinking-related problems.

This legislation builds on the foundation of the alcohol warning label measure I authored in 1988. That bill, now a law, requires that all alcoholic beverage containers carry health warning labels.

The health messages required by the advertising legislation are very similar to those appearing on beverage con-

tainers. They provide information on the possible consequences to drinking during pregnancy; impaired ability to drive or operate machinery under the influence of alcohol; the possibility of interactions with other drugs; the possibility of becoming addicted to alcohol; and a reminder to consumers that it is illegal for those under 21 to purchase alcoholic beverages.

I believe this measure is both necessary and long overdue, and public opinion supports my conclusion. In survey after survey—some sponsored by alcohol industry and advertising publications—the majority of Americans polled favored health messages in alcohol advertising.

These health messages do not impose any legal restriction or penalty to those who do not heed them. They merely caution consumers that use of the product may entail serious consequences. The legislation is aimed at providing important health information to the public, not at eliminating legitimate advertising.

The Alcoholic Beverage Advertising Act of 1991 has been endorsed by dozens of public safety and health organizations, including the American Medical Association, the American Academy of Pediatrics, the National Parent-Teacher Association, the Center for Science in the Public Interest, the National Council on Alcoholism and Drug Dependence and Mothers Against Drunk Driving.

Several weeks ago I wrote the chairman of the Committee on Commerce, Science, and Transportation requesting hearings on this legislation, and it is my hope that they will be held before the end of this session. I urge my colleagues to consider this timely and important piece of legislation.

Mr. President, I ask unanimous consent that an article entitled "Study Finds Alcoholism Touches 4 in 10 in U.S." from the Washington Post be included in the RECORD immediately following my remarks.

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

[From the Washington Post, Oct. 1, 1991]

STUDY FINDS ALCOHOLISM TOUCHES 4 IN 10 IN THE UNITED STATES

(By Paul Taylor)

More than four in 10 adult Americans have been exposed to alcoholism in his or her family, and divorced or separated men and women are three times as likely to have been married to an alcoholic as other married men and women, a federal survey shows.

"It is clear from this study that statistics on the number of alcoholics in this country—10.5 million—greatly underestimate the total number of people affected by the disease of alcoholism," Secretary of Health and Human Services Louis W. Sullivan said in releasing a survey by the National Center for Health Statistics.

"Since the beginning of the war on drugs, there has been so much focus on illicit drugs that there's been a tendency to forget that the drug that most profoundly affects people's lives is alcohol," said Christine Lubinski, director of public policy for the National Council on Alcoholism and Drug Dependence, a private, nonprofit advocacy group. "We are gratified that these findings dramatize how much we need to focus on alcohol."

The survey was based on interviews with 43,809 adults in 1988. It did not define the terms "alcoholic" or "problem drinker," but allowed respondents to interpret those terms as they wished. All of the following figures combine those two terms. Among the major findings:

76 million adults, or 43 percent of the adult population, either grew up in a family with an alcoholic, married an alcoholic or have had a blood relative who is an alcoholic.

Exposure to alcoholism in one's childhood has grown more prevalent in recent generations. The report found that 21.4 percent of persons age 18–44 reported growing up in a family with an alcoholic, compared to 16.5 percent of those age 45–64 and 8.5 percent of those over age 65.

It speculated that some of this increase may stem from the fact that younger adults identify problem drinking at an earlier stage than older adults, who grew up in a social milieu that did not identify alcoholism until an alcoholic was "falling down" drunk or could not work.

More than one-third of all separated or divorced women said they had been married to an alcoholic at some time, compared to 12 percent of all married women. Widows were about twice as likely as married women to have been married to an alcoholic. Just under 11 percent of all separated or divorced men said they had been married to an alcoholic, compared to 3 percent of married men.

"Although many marriages survive the effects of alcoholism, either because the alcoholic seeks help or because the family accommodates to the alcoholic drinking, it is clear that a large number of marriages dissolve in the face of alcoholism," wrote Charlotte A. Schoenborn, the report's author.

"Not only are family members of alcoholics more vulnerable to developing alcoholism themselves," said William L. Roper, director of the Centers for Disease Control, "they also are often subjected to many adverse conditions associated with alcoholism—conditions ranging from economic hardship to physical abuse."

Lubinski said she hoped the report would fuel two legislative initiatives currently before Congress—one that would include alcoholism as one of the diseases covered under the various universal health coverage proposals being drafted, and another that would require health and safety warnings be included in all alcohol advertising.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I have followed closely the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. I have watched the confirmation process with much interest, and with an enormous sense of the impact that Judge Thomas could have on the lives of all Americans for the next half century.

I have been struck by Mr. Thomas' personal history, and by how he overcame racial bigotry and State-sanctioned discrimination to become a successful public official and an appeals court judge. I have found Judge Thomas to be personally engaging and charming. But through it all, I have not found sufficient evidence that Mr. Thomas possesses the qualities Americans should expect—indeed demand—from a member of the highest court in our land.

Mr. President, the Senate's advise and consent role is among its most significant responsibilities. The Senate is obligated to ensure that any individual appointed to the Supreme Court will vigorously uphold the Constitution and protect the many freedoms that we, as Americans, enjoy.

The President is not entitled to a blank check when it comes to judicial nominations. The judicial, executive, and legislative branches are coequal partners in our Government. While the President may be entitled to some degree of deference when he nominates individuals for Cabinet positions, he is entitled to no such deference when it comes to the Supreme Court. And the Senate should test every Supreme Court nominee based not on politics, but on ability, temperament, and sincerity.

Mr. President, after watching the hearings, reading numerous materials written both by and about Mr. Thomas, examining Mr. Thomas' record and discussing with Mr. Thomas various aspects of his personal philosophy, I have concluded reluctantly, I might say, that I cannot vote to put Clarence Thomas on the U.S. Supreme Court.

Throughout the nomination process, I have tried to piece together the real Clarence Thomas. I began the process with an open mind and liked Mr. Thomas personally when I met him. But much to my disappointment, Clarence Thomas did little to show the country who he is, or what he believes in. In fact, he provided more questions than answers.

As I watched the Judiciary Committee's confirmation hearings, I was dismayed to see Mr. Thomas backpedal from virtually every controversial opinion he has expressed over the last decade. The Clarence Thomas who espoused the use of natural law as "the only firm basis for a just and wise constitutional decision" was absent at the hearings. In his place sat a new Clarence Thomas who told the Judiciary Committee that he does not "see a role for the use of natural law in constitutional adjudication."

Then there was the Clarence Thomas who told the committee that Roe versus Wade was one of the two most important Supreme Court cases to be de-

cided in the last 20 years, but claimed never to have discussed it. The old Clarence Thomas, on the other hand, referred to an essay on the right to life, written by Lewis Lehrman, as "a splendid example of applying natural law." That article's principal focus was the Roe versus Wade decision, yet the new Clarence Thomas claims never to have discussed the case or even formed an opinion on its outcome. Mr. President, this is not a case of prochoice or prolife; it is a question of credibility.

Even if Mr. Thomas is telling us the truth, I have to question the thoroughness, temperament, and intellectual curiosity of an individual who could so easily commend an article that advocates a viewpoint on which he has formed no opinion.

Mr. President, I am also troubled by Mr. Thomas' comments about Justice Oliver Wendell Holmes. In his remarks before the Pacific Research Institute in 1988, Mr. Thomas castigated Justice Holmes for his views on natural law. He quoted from an essay by Walter Berns, stating "no man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach. * * * what a people needs in order to govern itself well."—views which, as Senator Heflin pointed out, Mr. Thomas now claims as his own.

But Mr. Thomas told the Judiciary Committee that he respected Justice Holmes as "a giant in our judicial system." He said that he later read additional materials about Justice Holmes and changed his view. And he dismissed his previous comments on Holmes as merely the words of another scholar.

Again, just as with the Lehrman article, I have to question not only Mr. Thomas' forthrightness but also his thoroughness and impartiality. As Senator Heflin put it, "Judge Thomas' responses suggest to me deceptiveness, at worst, or muddle headedness, at best."

Judge Thomas insists that he should be judged as the Judiciary Committee saw him, not based on the decade of writings, speeches, and policy positions he has under this belt. But what the Judiciary Committee saw was a man who engaged in a full-scale retreat from countless public positions he has taken over the past decade. Thomas abandoned his pronounced opinions on affirmative action. He abandoned his advocacy of natural law. He abandoned his opinions about congressional power and oversight. And he abandoned his views on Justice Holmes. How can Mr. Thomas expect anyone to discount his abrupt transformation, when he stands to inherit an office from which he will render decisions that will affect the rights of millions of Americans for years to come?

Mr. Thomas tells us that we should believe him because his previous writings and speeches were made in his role as an executive branch official. He asserts that many of his previous opinions were the musings of an amateur political philosopher, while others were given in his role as an advocate.

Mr. President, even if one accepts these arguments, which I do not, one has to question the logic of Mr. Thomas' views about the responsibilities of judges. Mr. Thomas asserts that as a judge he has cast aside all of his former opinions, and in fact, no longer forms opinions on any issue that could come before the Court, lest he lose his objectivity.

Of course, judges should be objective. That is their job. But it is either naive or disingenuous for Judge Thomas to suggest that he does not bring values and opinions into the courtroom. Indeed, I believe it is far-fetched for Judge Thomas to suggest that his previous opinions, presumably shaped by his experiences earlier in life, are somehow irrelevant now that he is a judge. Judge Thomas describes his childhood experiences at length, presumably so that Members of the Senate will take that past into account in determining how to vote. Yet he tells us that nothing he said during the last decade matters. He tells us to ignore opinions that he expressed vehemently as recently as 2 years ago.

Mr. President, I find it extremely difficult to ignore those opinions.

Then there is Mr. Thomas' chairmanship of the Equal Employment Opportunity Commission. During his tenure, Mr. Thomas allowed thousands of age discrimination complaints to exceed the statute of limitations. When the Senate Special Committee on Aging first confronted Mr. Thomas about the complaints, the committee did not find him to be forthcoming or cooperative. In fact, the Aging Committee tried for months to extract from Mr. Thomas' EEOC information on the number of age discrimination charges that had expired due to inaction. After Mr. Thomas repeatedly stonewalled the committee, it was forced to resort to use of a subpoena.

By the time the committee issued its subpoena, it had been inquiring for several months into the number of complaints that had exceeded the statute of limitations. The subpoena was issued after Mr. Thomas publicly stated that 900 claims had expired—a statement he made after failing to supply that same information to the Aging Committee.

Mr. Thomas' inaction caused thousands of individuals to lose their right to have their day in court. As far as these people were concerned, Congress might just as well never have enacted the Age Discrimination in Employment Act—because Mr. Thomas' neglect rendered the act virtually useless to them until Congress restored their right to be heard.

Mr. Thomas expressed to the Judiciary Committee his sorrow at the lapse that caused so many individuals to lose their rights. But this sounded quite different from the Clarence Thomas who piloted the EEOC. During an EEOC meeting where the commissioners discussed an important age discrimination case, Mr. Thomas was asked whether he thought it would be coercive for a company to threaten older workers with job loss if they refused to retire early. He responded, "I think it constitutes reality." That indifference to older workers leads me to believe, Mr. President, that Mr. Thomas' sorrow runs much more toward his personal reputation than toward the hardship suffered by countless victims of age discrimination on whom his agency turned its back.

Finally, Mr. President, I am concerned that Judge Thomas does not have the scope of legal knowledge that a Supreme Court justice should possess. Justice Souter showed an exceptional command of constitutional law. He showed a depth of judicial knowledge leagues above that demonstrated by Judge Thomas. And he showed a measure of thoughtfulness that I do not see in Judge Thomas.

Some believe that Mr. Thomas' background would add important diversity to the Court. But Mr. President, there are two kinds of diversity—diversity of experience and diversity of thought. And this Senate is not voting on Mr. Thomas' past, but on the Mr. Thomas of today—and 30 years from today. While Mr. Thomas may come from roots vastly different from the other Justices, I do not believe he is an individual who will contribute to the intellectual and philosophical balance of the Court—a balance that has steadily eroded during the last 10 years.

Mr. President, I fully expect that the Senate will confirm Judge Thomas. Therefore, I share the hope of those who believe that Mr. Thomas will grow as a Justice, and will approach constitutional adjudication with a truly open mind. However, I am not prepared to gamble my vote on such hopes. The stakes are simply too high.

I thank the Chair and yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to take just a few moments today. It is no secret that I feel Judge Clarence Thomas should be confirmed to the Supreme Court of the United States of America. I have known him for over 10 years, and I can tell you he is one extraordinary human being. He is honest; he is a person of integrity; he is a person of capacity; he is a person of good work habits; he is a person of fairness. He is the type of person that I would like to have my cases heard before, on either the trial or appellate benches of this country, and certainly on the U.S. Supreme Court.

It has been amazing to hear some of the arguments against him. I would

like to take a few moments to briefly touch on and respond to some of the more egregious charges. I am only picking a few at random—there have been a lot more—from some I heard yesterday on the Senate floor by some of my colleagues who voiced their opposition of Judge Thomas' confirmation.

Let us take one charge: Judge Thomas was evasive and did not respond to the questions of the Judiciary Committee. The real complaint, in my opinion, is that Judge Thomas would not commit himself to voting the liberal agenda. What Judge Thomas said again and again is that he has no agenda other than interpreting the law as written by those who are entitled to write it.

Another charge: Judge Thomas, they say, is unbelievable when he says he has never talked about Roe versus Wade, the abortion case, and he has no position on it. I went into this yesterday. What Judge Thomas said is that he has never debated the merits of Roe versus Wade. That is considerably different from saying he has never discussed it. He did not say that he has never thought about it or discussed it. What he did say is that, as a judge, he has no position on it, and that he would approach the case with an open mind and no preconceived agenda.

That is all we can properly ask of any judge. We cannot extract the kind of commitments that some of our liberal colleagues seem to want. We should not seek to extract commitments in advance by judicial nominees to vote for conservative or liberal results.

Another charge: Judge Thomas is opposed to affirmative action and equal opportunity programs. That is pure rubbish, and those who charge him with that know it. Judge Thomas made clear that he, like the majority of the American people, opposes preferences which, as I explained yesterday, are vastly different from outreach programs and other nondiscriminatory measures that increase opportunities for members of all groups. Judge Thomas has expressed support for this latter form of affirmative action, increased outreach and recruitment. He has opposed racial and gender preferences.

Another one: The distinguished Senator from Massachusetts said that the Supreme Court is supposed to be the "impartial umpire," and says that Judge Thomas might possibly threaten that role. This is the same colleague who argues that the Supreme Court is supposed to take notice of the racial, ethnic, or gender identities of the litigants before it and rule according to whether the litigants happen to be members of particular preferred groups. With all due respect, my friend and colleague does not, in my opinion, want an impartial Supreme Court. He appears to want a Court that will serve as an engine for imposing the liberal agenda on all of America.

Another charge: Judge Thomas has had a career of expressing "extremist views." That is hogwash. Anybody who looks at his career knows it. This is nothing more than an effort to define the mainstream by those who, I respectfully suggest, could not find the mainstream if they paddled for weeks and months. These are the people who want the courts to continue to invest rights, to impose policy outcomes on the American people that they know would never be accepted at the ballot box and that they cannot get here through the Senate and through the House of Representatives.

These very same people, since they cannot get their liberal agenda through the Congress, because most Americans will not stomach it, want the courts to do it for them, and in the past we know the courts have.

Another charge: Judge Thomas was misleading when he did not discuss the Lamprecht case before him in the D.C. Circuit Court of Appeals when he was asked about Metro Broadcasting by Senator SPECTER. Judge Thomas could not discuss that particular case because it was pending before him, and if he had tried to, he would have violated the canon of judicial ethics. Judge Thomas is to be credited for maintaining his judicial impartiality.

In Metro Broadcasting, the Supreme Court held that the FCC—the Federal Communications Commission—could grant preferences to minority applicants in broadcast license application proceedings. The Court, however, expressly declined to reach the question of whether the FCC could grant similar preferences to applicants on the basis of gender.

In the Circuit Court of Appeals for the District of Columbia there was a case involving Jerome Lamprecht's application for a radio broadcast license. Mr. Lamprecht was denied a license because, in the words of the administrative law judge who made the ruling, he had a "birth defect"; that is, he was male—simply, purely because he was male.

This case was held in abeyance pending the resolution in the Supreme Court of Metro Broadcasting. When the Supreme Court decided that case, the D.C. Circuit took up again Mr. Lamprecht's case. Judge Thomas was assigned to the panel that is considering the case, and it is still under consideration. To criticize him for not discussing it in open forum is highly improper, highly unusual, and absolutely wrong.

With respect to this case, now pending before the Court of Appeals for the District of Columbia, Mr. President, I find it incredible that Members of this Senate relied essentially on a press report for attacking this nominee. I believe the opponents of Judge Thomas have well exceeded the bounds of decency and fairness on this issue.

The serious breaches of judicial confidentiality upon which the Legal Times article is based demonstrated one thing: Some opponents of this nominee will not even stop at subverting the judicial process itself in order to tear this good man down.

There are those in this body who will make use of such an abuse in order to block the man. No one in the Senate has seen this draft opinion, I might point out.

I respectfully submit that the Senate demeans itself by being a party to this kind of attack on a nominee.

I believe the American people should know that the case involves the lawfulness of the Federal Government's preference for women in the award of the ownership of a radio station license. Make no mistake, this kind of affirmative action is not even remotely aimed at poor or disadvantaged persons. These preferences—the Supreme Court has already upheld such preferences for minorities—are only helpful to the very well-off. Only the well-off could hope to afford to own a radio or television station.

Whether the case upholding minority preferences in broadcast licenses, Metro Broadcasting versus FCC, controls the outcome of the pending case is beside the point. These cases are not only about gender and racial preferences, but for such preferences only the well-off in those groups can benefit from them. I think that is important to understand. Finally, had Judge Thomas disclosed his thinking in Lamprecht then, he would have been wrong and he would be violating professional and judicial ethics.

Finally: We have heard from several Senators opposing Judge Thomas that he has an admirable personal background and an excellent education, a keen intellect, and a fine record of professional achievement. Almost everybody is saying that. The ones who seem to be saying it more than anybody else seem to be the opponents to Judge Thomas. In substance, not because the rest of us do not feel otherwise, those who support him, we know that those things are true, but they say this as though it justifies some of the attacks that they are making.

Judge Thomas' answers to the Judiciary Committee are very similar to the answers that the committee received from then Judges Kennedy and Souter. So it cannot be that his background or his answers to the Judiciary Committee are what are causing the opposition in this case. It appears to me that the answer has to be that Judge Thomas is a black moderate-to-conservative who has been unwilling to heel to the liberal party line. It is Judge Thomas' fierce independence, I would suggest to you, that really sticks in their craw.

Frankly, I think it is very difficult for them to see that a moderate-to-conservative African-American will have the opportunity of sitting on the U.S. Supreme Court and become a role model for people all over this country regardless of race, ethnicity, or gender.

I think that is a tremendous, considerable worry to some. I think there may be just a little bit of thought that they might be able to damage the President of the United States, also, in the process—on the part of some, not all. I know some are very sincere in their opposition to Clarence Thomas, and I have to uphold their right to oppose him in that regard.

I think there is a little bit more involved with some. I do not mean to be cynical, but I have seen it year after year. He is an admirable person with keen intellect, who has come up through poverty and has had an amazing life—prefacing their next set of remarks where they try to tear him down because he, like Justices Souter, Kennedy, and the others answered the questions pretty much the same.

Why is he being treated differently from them? As you all know, they passed through the U.S. Senate pretty readily, under the circumstances.

I am shocked by the cynical distortions some of my friends on the other side of the aisle have engaged in with respect to this nominee.

We have seen during this debate the unedifying spectacle of well-born white liberals try to tell Judge Thomas what being black is supposed to be all about. It is disappointing to see this nomination used to create straw men, knock them over, attack a nominee personally, characterize his family, pander to the most leftward special interest groups in one's electoral strategy, seek the applause of liberal pundits, at the expense of this man, Judge Clarence Thomas.

Judge Thomas has never said Government intervention was not necessary to help people, as some Senators have said. First, what has this to do with his responsibilities as a Justice? Beyond that, if Senators were not so intent on finding excuses to vote against this nominee, and on painting a caricature of this man, they might have watched a replay of a 1983 interview of Thomas with Tony Brown on Tony Brown's Journal. Mr. Brown asked Judge Thomas, and I am paraphrasing: Are Government social programs the cornerstones of black progress? The judge replied: No, they are a steppingstone, not a cornerstone. And he has never departed from that view. He has never, to my knowledge, said that there should be no Government social programs.

But what if he had? Again, his views on policy issues are irrelevant to his duties on the Court. And absurd guilt-by-association tactics are used against him to suggest he has an affinity for a point of view which would do away with Social Security or college financial aid, neither of which he would do.

It must be pretty easy to decide to vote against someone on the basis of contrivances and distortions.

One Senator, who I very much respect but who I disagree with, complains that Judge Thomas is not "a person that you would want structuring the legal framework for our children's future."

I agree with him in one sense. I would not want any judge doing that. That is what we are supposed to do here in the Congress. We are elected to do that. Judges are not elected to structure the legal framework for our children's future. We are.

To oppose the nomination of Judge Thomas on this basis reveals such a fundamental misunderstanding of our Nation's legal and constitutional makeup that I hardly know how to rebut it. I do not think it is worth the rebuttal time. We, not an unelected judge, are responsible for "structuring the legal framework of our children's future."

Do these Senators who feel this way propose simply to abandon our duties in this regard, so that nine unaccountable, unelected men and women can enact the laws that Congress fails to provide?

Let us be clear on this. We, in the Senate and House, and our counterparts in the State legislatures, are responsible for structuring this Nation's laws. That is what we do. We pass laws. I have to say that we pass good ones, as well as bad. No judges, however good, are going to correct our failures, and we should not look to the Court to do so.

Some of his opponents claim they followed the hearings, and still they heard only what they wanted to hear. They claim he abandoned most of his views at the hearings. This was not so, as I pointed out yesterday. For example, the judge's discussions of affirmative action with the committee were steadfast. Judge Thomas refused to budge from his stated opposition to racial preferences, articulated as a policymaker in the executive branch.

Much of the opposition to Judge Thomas, in my view, stems from his forthright stand on this very issue. Judge Thomas was and is unequivocal in his support for outreach programs, for making efforts to broaden the scope of employee applicant pools, for making whole the actual victims of discrimination, and for punishing the wrongdoers, rather than innocent third parties.

At the same time, he defended his opposition to race-conscious preferences that do not provide relief to actual victims of discrimination, but rather, provide benefits to members of particular groups solely because of their membership on those particular groups.

His support for educational preferences based on disadvantaged status, regardless of race, is fully consistent with his opposition to racial preferences. He says, let us treat all of the disadvantaged, regardless of race, ethnicity, or gender, the same and help them along.

Frankly, the most astonishing vanishing act during the hearing process was by supporters of racial preferences on the other side of the aisle, who barely raised the issue with the judge. The one time they did raise it, it was on a misunderstanding of the case they were raising it on. He never implied that his philosophy is like a set of clothes to be changed, depending on the circumstance, as if he has no views, no convictions or commitment to them.

He said that, in his role as a judge, he sheds his policy views, like a runner strips off excess clothing. If some Senators cannot understand the difference between a policymaker and a judge, that is their problem, not an inconsistency in the judge himself.

This distinction between the judge as an interpreter of the written law, and the legislator as the author of the written law, appears to be wholly lost on some of Judge Thomas' critics. They are incredulous that Judge Thomas could, as a policymaker, have taken strong positions, and then, as a judge, forswear any policy agenda. For them, apparently, adjudication in the courts is nothing more than a continuation of politics by other means.

Put more bluntly, some of the critics of Judge Thomas would collapse the distinctly different functions of adjudication and policymaking into an approach that simply reaches a preferred policy result, whatever the violence done to the written law.

I agree with one of his opponents who said we should not sentimentalize black life in America and that significant parts of the black community have some dire problems. But that Judge Thomas does not necessarily share the prescriptions of many of the traditional civil rights leaders for these problems, that Judge Thomas thinks for himself and is independent of some of these leaders and their groups, even though some of his opponents in this body may not be, is no reason to engage in personal attacks on this good judge.

That he disagrees with welfarism as a principal approach to these problems, that he is tough on crime, that he opposes racial preferences, is just to say he espoused another way to address these serious problems.

He told the Judiciary Committee last year that he became a lawyer so that those who do not have access in our society can gain access. He said he may differ with some as to how to achieve access, but access is the goal.

How do these liberals think the conditions in the black community, which they decry, got that way? Racism and its legacy are two important reasons.

No one should minimize them. Judge Thomas does not minimize them. I do not. But it is 1991—racism is not the only explanation. It is just one.

Perhaps some of the do-good policies fostered by those of the more liberal persuasion have had something to do with the plight of disadvantaged blacks in this country—a welfare policy, for example, which encourages the break-up of families.

One of the judge's critics referred to urban schools as "warehouses, rather than places to learn."

I invite my colleagues to support education vouchers and tuition tax credits to widen opportunity and choice for disadvantaged persons. These are not panaceas, nor are they the only answer. They are not self-help. But they are different ways to approach the failures of urban education in this country.

After all who has been in charge of urban education in this country, conservatives? Hardly. Not over the last 50 years. No one has all the answers. Judge Thomas does not claim to have them. His critics certainly do not have them.

But to try to shunt off the debate on these important problems by characterizing this man does not help in stopping the problems. In listening to critics I have tried to determine why are they opposing Judge Thomas.

Is it because of his short tenure on the bench? I do not think that to be the case; 41 of the 105 Supreme Court Justices had no prior judicial experience at all. Some of the greatest Justices in the history of the Court never had a day on a court before they became Supreme Court Justices, another 10 had less than 2 years of judicial experience. Thus Judge Thomas has had as much or more experience than have many of those who served on the Supreme Court.

Is it his record in the executive branch? Is that what is wrong? Following his tenure at the Department of Education, the Senate confirmed him twice to the chairmanship of the EEOC. Judge Thomas was confirmed as Assistant Secretary for Civil Rights at the Department of Education, and twice as Chairman of the EEOC, and then once to the second highest court in this country, the U.S. Court of Appeals for the District of Columbia Circuit.

Judge Thomas, the only person I know of in the history of the country confirmed by this august body four times within 9 years, and now all of a sudden he is running into all kinds of roadblocks, now that he has an opportunity to represent all of us on the Supreme Court of the United States of America. This is an opportunity he deserves to have, that he has the integrity to have, and that he has the intellectual capacity to have. It cannot be his record in the executive branch because, like I say, we have confirmed him for positions there three times.

Following his first EEOC term, Judge Thomas was reconfirmed to a second term. Of my colleagues who are criticizing him for his EEOC record, only one of them voted against him. At least he is consistent. But then Judge Thomas was confirmed to the Federal appellate bench. Following the second EEOC term, he was confirmed to that judgeship by this body overwhelmingly.

The Washington Post, in 1987, said that the EEOC was thriving under Judge Thomas. In 1991, U.S. News & World Report said it seemed clear he left the EEOC better off than he found it.

I believe that there are two basic reasons for the opposition to Judge Thomas. Some of his opponents simply cannot bear the thought of an intelligent moderate-to-conservative African-American rising to such a position of prominence that he will be a role model that will cause others to start thinking there may be a better way than what has happened in the past.

The thought of a black American expressing opposition to racial preference in this country is anathema to some of Judge Thomas' opponents. For them Judge Thomas should be shown to the back of the bus. What an irony.

The other reason for opposition I believe is the vanishing liberal hope that the judiciary, under the pretext of interpreting the Constitution, will impose on the American people the very same liberal policies that have been overwhelmingly rejected in five out of the last six Presidential elections.

Mr. President, I have to tell you that the principle of stare decisis, or following prior precedent, has suddenly risen to the forefront with those who oppose Judge Clarence Thomas. They now want all of those liberal decisions handed down by the Warren and Burger courts, maintained intact no matter how wrong they may be.

I have a feeling a number of them will remain intact, in part because Judge Clarence Thomas will be there and because he is not in anybody's pocket. I guarantee to this body that Clarence Thomas is going to disappoint a number of us on this side as well as a number of us on that side from time-to-time because he will not decide the law the way we think he ought to. But that is true of almost every Supreme Court nominee in history.

I have to tell you if we start determining that we cannot vote for anybody who is nominated to the Supreme Court who does not agree with every one of our litmus test positions on issues, there will never be Justices on the Supreme Court, nor will the Court amount to much because it will be thoroughly politicized. And once that happens they will become the superlegislature. And these bodies, the Senate and House, will diminish in importance. The principle of separation of powers that the Constitution has provided, and which has made this country the greatest country in the world and which has served the American people about as well as any constitutional provision possibly could, would then be jeopardized.

Mr. President, I am concerned. I am concerned that to judge him on the few litmus test issues he is being judged on by some who are going to vote against him contributes to a destabilization of government by erosion of the principle of separation of powers.

We simply cannot afford the luxury to reject judicial nominees because they do not agree with us on issues or even two or three issues, with what we think are the right things that ought to be done.

There are literally thousands of issues that can come before that Court, and every issue that does is important to those litigants. And the best we can do in the Congress is to support people of honesty, integrity, good judicial temperament, good work habits, and good intellectual capacity. I have to tell you Clarence Thomas has all of those going for him.

Anybody who watched the hearings has to admit this is a very fine man, of great capacity, who will do a great job on the Court, maybe not one that will please each and every one of us on each and every issue—he is certainly not one who will do that—but nevertheless one who will give it his best, and do a good job and I think be a role model for all of us to follow.

I hope all of our colleagues will give him a better break and really look at the record now, really look at what he stands for, really look at his life, really look at his service in State government and the three branches of the Federal Government, and his tenure in the private sector and give this man the opportunity, as one of only two African Americans ever nominated to the Court, to serve the people of the United States of America and to be example all of us would like him to be. I know he can and I hope that all of us will consider voting for him next Tuesday evening.

It is an important vote. I think it is important that we give him our assurances that we have confidence that he can do the job. I know he has confidence he can. He held one of the toughest positions in the Government and did it well and had the praise of those who philosophically disagreed with him. To have him now being held up because of litmus tests, and darn few at that, I think is the ultimate irony in this Supreme Court confirmation process.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Indiana.

Mr. COATS. Mr. President, I rise in strong, unqualified support for the con-

firmation of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

It has been observed that, "when a man assumes leadership, he forfeits the right to mercy." Clarence Thomas, knowing the interest groups arrayed against him, had no expectation of mercy, but he has every right to demand honesty and fair play, and he has found, in many cases, very little of either.

The tone was set when Florence Kennedy described the National Organization for Women's objective. "We are going to Bork him," she said. "We're going to kill him politically * * * this little creep, where did he come from?"

For groups like these, politics has become nothing more than the systematic organization of hatreds. Civility and integrity are sacrificed to irrational bitterness. They insult and trivialize an important process with shrill nonsense. They have forfeited their moral authority through exaggeration and distortion. But they have succeeded in making the work of the Senate more difficult.

It is our responsibility to ensure that Judge Thomas is fairly treated—to hear the evidence above a din of partisanship. The confirmation process is not properly a political struggle—that struggle was decided in a Presidential election 3 years ago. It is, instead, an impartial consideration of ability, accomplishment, temperament, and respect for constitutional values.

That is our goal. Only by these standards are we worthy to sit in judgment of those who judge.

Some of the specific criticisms leveled at Judge Thomas shout for refutation. Let me specifically address a few:

First, he has been assaulted with an intolerance that I have seldom witnessed in Washington. A nationally syndicated columnist accuses, "if you gave Clarence Thomas a little flour on his face, you'd think you had David Duke talking." Harvard Law Prof. Derrick Bell has pronounced that Thomas "looks black and thinks white" and acts like a slave made an overseer by his white masters. The New York Times felt it was necessary to consult a prominent psychiatrist to find out how an educated black man might actually become a conservative—as though his political beliefs were symptoms of some mental dysfunction.

This reaction encompasses both fear of diversity and a resentment of rival authority. It is a heavy-handed attempt to impose the reign of the politically correct through the intimidation of demeaning invective.

On this issue, Clarence Thomas spoke for himself in 1985 more convincingly than any of his defenders. In the Los Angeles Times he wrote:

> There seems to be an obsession with painting blacks as an unthinking group of automatons, with a common set of views, opinions and ideas. Anyone who dares suggest this may not be the case * * * is immediately cast as attacking the black leadership or as some kind of anti-black renegade.
>
> Many of us accept the ostracism and public mockery in order to have our own ideas, which are not intended to coincide with anyone elses' although they may do just that. The popularity of our views is unimportant; hence, polls and referendums are not needed to sustain or ratify them. Perhaps the most amazing irony is that those who claim to have progressive ideas have very regressive ones about individual freedoms and the attendant freedom to have and express ideas different from theirs.
>
> We certainly cannot claim to have progressed much in this country as long as it is insisted that our intellects are controlled entirely by our pigmentation.

Second, Judge Thomas has been accused of opposing basic civil rights with brutish insensitivity. Here again, the charge is moral, while the real disagreement is political. Thomas explains:

> I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless the constitutional principle is first established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious, legal devices that only further and deepen the original problem.

While Judge Thomas supports affirmative action, he has opposed quotas and preferential treatment. It would be an extraordinary irony to label as an enemy of civil rights a person who articulates views accepted by most of the American public and defended by figures such as Hubert Humphrey and Martin Luther King, Jr.

Third, Judge Thomas has been charged with being unresponsive to questions by the Judiciary Committee. Here some historical perspective is in order. During Judge Thurgood Marshall's confirmation hearings, he was questioned closely by Senator John McClellan of Arkansas concerning Miranda versus Arizona. Marshall replied:

> On decisions that are certain to be reexamined in the court, it would be improper for me to comment on them in advance. From all the hearings I have read about, it has been considered and recognized as improper for a nominee to a judgeship to comment on a cause he will have to pass on.

That is not a quote from Clarence Thomas. That is a quote from Thurgood Marshall.

But this was not all. Senator Sam Ervin attempted to get Marshall to discuss the case law that led up to Miranda—much like questions asked on the privacy cases that led to Roe versus Wade. But Marshall would not even comment on the words of the fifth amendment concerning self-incrimination. A frustrated Ervin complained that, with the Supreme Court's wide jurisdiction, the nominee would be giving the committee very little specific information. "It is a problem," admitted Marshall. But he added that it was a problem for the committee, not for the nominee. In the end, Marshall would only comment on cases decided long ago which were no longer controversial.

I find it somewhat ironic that many members of the Judiciary Committee complain so long and loud about the response given by this current nominee and the position taken by this nominee was identical to the position taken by his predecessor, who was roundly praised for his judicial integrity, for his openmindedness, and for his objectivity by these very people criticizing Clarence Thomas.

Fourth, Thomas has been opposed because he would upset the ideological alignment of the court. But in that same Marshall confirmation, a response to that objection came from Senator Roman Hruska of Nebraska. He had received a letter claiming that Marshall was too liberal and would upset the balance of the Court. "The nominating power," he argued on the Senate floor, "lies with the President of the United States: If it is his desire to appoint someone he considers a liberal, that is his prerogative. If he wants to nominate someone he considers a conservative, that is also his prerogative. The role of the Senate is to inquire into the integrity, the competence and the record of the man" not his ideology.

Fifth, Judge Thomas' record at the Equal Employment Opportunity Commission has also come under attack. That Commission experienced some difficulties. But the only way we know of those problems is because of the case management and litigation tracking improvements that Thomas himself initiated. The Chicago Tribune concluded in 1988, "everybody makes mistakes. Too few people in public life own up to them, much less pledge uncompromisingly that they will be corrected. Bless you, Mr. Thomas, for straight talk in an age of waffling."

And those problems were corrected. In 1981, before Thomas' tenure, the EEOC recovered less than $30 million in benefits for victims of age discrimination. In 1989, the figure was nearly $61 million. In 1981, 89 lawsuits were filed under the Age Discrimination in Employment Act. In 1989, it was 133. All this was accomplished during a time when manpower was decreased by 10 percent.

Each of these issues has been near the center of controversy in the Thomas nomination. But the most basic, challenging, complex debate has concerned the nominee's conception of natural law. The chairman of the Judiciary Committee told Judge Thomas, "finding out what you mean when you would apply a natural law philosophy to the Constitution is, in my view, the most important tasks of these hearings."

The press has joined in the attempt. Reporters who have seldom darkened the door of a church read Aquinas long

into the night. U.S. News & World Report asks what it considers the ominous question, "would Justice Thomas put God on the bench"? It warns that Thomas would "provoke a firestorm of opposition if he suggests that practices such as birth control * * * are 'unnatural' and, thus, not protected."

Nine constitutional scholars jointly wrote a letter to the Senate Judiciary Committee about Judge Thomas' natural law convictions: "As a matter of constitutional method, natural law is disturbing when invoked to allow supposedly self-evident moral 'truth' to substitute for the hard work of developing principles drawn from the constitutional text and precedent."

The Leadership Conference of Civil Rights argues that Thomas' opinions on natural rights are "radical and place him well outside the judicial mainstream." The National Women's Law Center concludes, "Judge Thomas' theory sets him far outside the mainstream of legal thinking."

But it has been constitutional scholar Lawrence Tribe who has raised the most dramatic concerns. "The power of Congress and of every State and local legislature [hangs] in the balance," he writes. Thomas' view of natural law threatens nothing less than "the fate of self-government in the United States."

Even discounting for hyperbole, this is a serious charge. And I want to take a few moments to examine the issue more closely, and particularly Judge Thomas' opinion on this matter.

At the most abstract level, there should not be much controversy at all. A distinction between natural or higher law and positive or written law is at the root of our national tradition. The Declaration of Independence talks of "certain unalienable rights"—but more than that, it argues "that to secure these rights, governments are instituted among men."

Individual rights, the American Founders asserted, existed before they actually did any founding. These rights, in short, are essential to the nature of things. A just government is created to secure them. Human rights do not come into existence because of some political act. On the contrary, every political act must conform itself to the fact of their existence.

The alternative to a belief in natural law is moral relativism and what is called legal realism or positivism. In this view, there is no higher authority than the law itself. There is no objective justice, only a balance between competing interests. No "law of nature and nature's God" stands in judgment over the actions of government. Jurist Hans Kelsen, who taught at both Harvard and UC-Berkeley, argued that law is only "a system of coercion-imposing norms which are laid down by human acts in accordance with a constitution." They have nothing, in short, to do with morality. "Any content whatsoever can be legal: There is no human behavior which could not function as the content of a legal norm."

Opponents of Judge Thomas may contend for this view; they may attack rival theories; but they may not claim that this view stands in the mainstream of American constitutional interpretation. Randy Burnett, professor at ITT-Kent College of Law, comments, "Americans believe they have rights that the Government didn't create and can't take away. Thomas is right in the mainstream of what people think."

The point of natural law is actually very simple. Constitutions do not create rights. They recognize them because they already exist. And they can never be sacrificed merely because it would be useful or popular. This is the conviction that allows us to condemn slavery, for example, both in ancient Rome and the antebellum South. Moral judgments on basic rights do not change with the flow of history or politics.

Judge Thomas has put himself squarely in this tradition:

> Our political way of life is by the laws of nature and nature's God, and of course, presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and government.

If the nominee did not have such a belief—if his thinking were adrift in relativism and skeptical of man's natural, innate worth—this would be a cause for concern. The upward progress of Western law is the history of extending and applying natural law to a widening circle of inclusion—to blacks, women, the physically and mentally handicapped. University of Chicago law professor Geoffrey Miller asserts that natural law is a theory which has "led to many of the most important and revered events in the history of civil liberties."

A survey of that history is an account of the highlights of American conscience and international justice. The Founders, as law students, would have read William Blackstone, whose writings were standard texts for the ERA:

> The law of nature, dictated by God himself, is binding in all counties and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all force and all their authority from this original.

Alexander Hamilton, steeped in this tradition, argued, "The fundamental source of all errors, sophisms and false reasoning is a total ignornace of the natural rights of mankind."

In the early 19th century, Chief Justice Lemuel Shaw of the Massachusetts Supreme Court called the acquisition of a slave "contrary to natural right." It was this central argument that animated the movement for the abolition of slavery.

This principle was invoked to justify the Nuremburg trials of Nazi war criminals. After the Holocaust, when an international tribunal was assembled, it was concluded that natural law provided a "solid foundation for the establishment of basic human rights for all men, everywhere." These transcendent standards of justice allowed for legal judgment in the absence of positive law.

For the same reason, it is embodied in the Universal Declaration of Human Rights adopted by the United Nations. That document begins, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. * * *"

Belief in natural law informed the civil rights movement in America from its beginnings. Thurgood Marshall, in his brief for Brown versus Board of Education, takes 36 pages to outline the ethico-moral principles that interpret the meaning of "equal protection" and "due process" in the intentions of the men who wrote the 14th amendment. "Their beliefs," Marshall said, "rested upon the basic proposition that all men were endowed with certain natural rights." In his argument, he quoted approvingly from an early opponent of slavery that "the law of nature clearly teaches the natural Republican equality of all mankind."

In the constitutional law textbook he authored, Lawrence Tribe writes that natural rights "have been invoked by more than one justice of the Supreme Court in modern times as a suggested framework for delineating the reach of the liberty clause of the 14th amendment." Among the judges he cites are Justice John Paul Stephens, and retired Justice William Brennan.

In 1976, Justice Stephens joined in a dissent with Justices Brennan and Marshall, wrote: "I had thought it self-evident that all men were endowed by their creator with liberty as one of the cardinal inalienable rights."

Even some major liberal legal theorists have made room for natural law reasoning. Tribe himself testified at the Judiciary Committee hearings for Judge Bork: "I am proud that we have * * * a 200-year tradition establishing that people retain certain unspecified fundamental rights that courts were supposed to discern and defend." Ronald Dworkin, another prominent liberal scholar, concludes, "If any theory which makes the content of law sometimes depend on the correct answer to some moral question, then I am guilty of natural law."

American history is guilty of natural law for the simple reason that it is inseparable from the theory of our founding. But the concept is broad. And a belief in natural rights does not settle the question of who should actually possess them. Professor John Hart Ely

of Stanford Law School wrote in his 1980 book "Democracy and Distrust" that natural law "* * * has been summarized in support of all manner of causes—some worthy, some nefarious—and often on both sides of the same issue." An obvious case was the use of natural law reasoning by both Abraham Lincoln and Senator Calhoun during the debate over slavery.

So even admitting that a belief in natural law is not extreme or bizarre, it is also not, in the end, sufficient to define a legal philosophy. Questions remain. Precisely what portion of natural law are judges in particular entitled or required to enforce? Is it possible to affirm a conservative belief in judicial restraint and assert the existence of natural rights?

On these questions, I believe that Judge Thomas has given us the outlines of a response.

Thomas' argument begins with the question of slavery. His object, according to his writings, is not to seek some grand and unifying philosophic theme. It is to answer one question: Was the practice of slavery unconstitutional even though the Constitution did not actually condemn it? It is a study that led him directly to the Declaration of Independence, history's boldest statement of natural law philosophy: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights * * *."

Thomas contends that the Founders crafted a Constitution that presupposed this earlier statement of purpose in the Declaration. He notes that the Framers excluded the word "slavery" from the text of the Constitution entirely. And he argues that the authors of that document envisioned the eventual abolition of slavery—a day when the promises of the Declaration would be kept. This, he is convinced, is the reason that Dred Scott was wrongly decided—because a broad notion of natural rights animates the Constitution through the Declaration. "The Constitution should be read," Judge Thomas explains, "as Lincoln read it, in light of the moral aspirations toward liberty and equality announced in the Declaration of Independence."

In a Howard Law School Journal article of 1987 he makes a more detailed application: "The jurisprudence of original intention cannot be understood as sympathetic with the Dred Scott reasoning, if we regard the original intention of the Constitution to be the fulfillment of the ideals of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it."

A great deal of the Constitution, of course, can be read without any reference to moral principle—things like age requirements for office and many other portions of the Constitution. But there are morally charged terms in the Constitution. The preamble sets the goal of establishing justice. The ninth amendment talks of unenumerated rights. As a number of scholars have noted, the Constitution seems to make use of the natural-rights language of the Declaration.

More specifically, Judge Thomas believes that the Constitution embodies natural rights in the privileges and immunities clauses of article 4 and the 14th amendment. He is convinced these passages amount, in the words of one commentator, "to an enforceable declaration of civic freedom."

The privileges and immunities clauses of the Constitution have gone unused for some time. Thomas has argued for their revival. He has commented that Brown versus Board of Education was a good opportunity—but a missed opportunity—to reawaken these principles. He has strongly attacked the Slaughterhouse Cases which weakened the privileges and immunities clauses and stripped the Civil War amendments of their power—a development that prepared the way for legal segregation.

All this comes down to a basic point. The centrality of the Declaration requires that the emphasis of Judge Thomas' approach to natural rights be placed on individual liberty and limited government. It cannot be an instrument of intrusion or unchecked power because it must work within the boundaries set by the Constitution, and through it, the Declaration. Thomas explains:

> I would advocate, instead, a true jurisprudence of original intent, one which understood the Constitution in light of the moral and political teachings of human equality in the declaration. * * * Here we find both moral backbone and the strongest defense of individual rights against collectivist schemes, whether by race or over the economy. * * * the natural rights, higher-law understanding of our Constitution is the nonpartisan basis for limited, decent, and free government.

In short, Thomas proposes an inseparable connection between natural law, individual rights, and limited government—forged in our founding documents. This conception of natural law is not a speculation of theology or philosophy. It is an attempt to discern what Thomas calls a true jurisprudence of original intent. At the end of this search is a clear conviction—the natural rights of individuals place limits on government, limits that require a separation of powers and bind each branch, including the courts.

Thomas concludes:

> Here, as Lincoln put it, lies the father of all moral principle in America. Equality means equality of individual rights, an equality resting on the laws of nature and nature's God. * * * because no man is the natural ruler of another, government must proceed by consent. And that, in turn, requires representation, elections and the separation of powers. These are the requirements of free government, and they rest on the moral conception of human worth, based on human nature.

This understanding of natural law, far from being a license for activism, is a demand for restraint. It requires a respect for individual freedom and the sovereignty of the people. And it accepts the constitutional allocation of authority between the branches of government.

A judge, with these constraints, does not have the warrant to enforce a broad definition of natural rights as he sees them. The scope of his decisions is set by the vision of natural law contained in the Constitution and interpreted by the Declaration.

This is the reason Judge Thomas could tell a meeting of the Federalist Society in 1988, "A natural rights understanding does not give Justices a right to roam." This is the reason he insisted to the Judiciary Committee that if confirmed he would employ the traditional tools of constitutional interpretation and statutory construction. This is the reason he has claimed, natural rights and higher law arguments are the best defense of liberty and of limited government.

A belief in the existence of natural law does not mean that judges can replace the conception of those principles that informs the Constitution with their own beliefs on the subject. Judge Thomas, in essence, has expressed two separate convictions: A belief in higher law, and a judicial philosophy that forbids him from putting his own opinions of that law in place of the Founders' vision.

With this in mind, it is no mystery why Judge Thomas has repeatedly attacked the idea that judges should overturn positive law based on their personal understanding of natural law. The Constitution cannot be interpreted by any individual moral vision. It can only be read through an understanding of the higher law principles of the equality asserted in the Declaration.

Natural law, as Thomas defines it, is a means to understand the Constitution, not a method to supplement its deficiencies. "My point," he told the Judiciary Committee on September 10, "was simply that in understanding overall our constitutional government, that it was important one understood how they believed—or what they believed in natural law or natural rights."

Thomas summarizes his approach carefully:

> The best defense of limited government, of the separation of powers, and of the judicial restraint that flows from the commitment to limited government is the higher law political philosophy of the Founders. * * * Moreover, without recourse to higher law, we abandon our best defense of judicial review—a judiciary active in defense of the Constitution, but judicious in restraint and moderation. Rather than being a justification for the worst type of judicial activism, higher

law is the only alternative to the willfulness of both run-amok majorities and run-amok judges. * * * To believe that natural rights allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law.

Legal analyst Jeff Rosen, writing in the New Republic, contends:

But in Thomas' case, fears of judicial activism seem to be unfounded. Like many liberals, Thomas believes in natural rights as a philosophic matter, but unlike many liberals, he does not see natural law as an independent source of rights for judges to discover and enforce. * * * Natural law for Thomas is a way of providing moral backbone for rights that are explicitly listed in the Constitution rather than a license for creating ones that aren't.

In the end, this evidence led Michael Moore, professor of legal philosophy at the University of Pennsylvania, to assert:

I take the attack on Thomas' natural-law views as a ploy by those who don't like his values. * * * There's nothing about natural-law theory about how judges should judge that's outside the mainstream.

In looking at Thomas' record and writings, I am convinced there are at least three strong indications that the nominee takes these related commitments to judicial restraint and individual freedom very seriously.

First, his approach to the ninth amendment indicates a keen awareness of a judge's limited roll. He wrote in a 1989 article:

The amendment has great significance in that it reminds us that the Constitution is a document of limited government. But it does not grant the Supreme Court an unlimited power to overturn laws for that would seem to be a blank check.

Second, the 20 opinions he authored on the D.C. Court of Appeals, and the 170 cases he participated in, have been called by one analyst, textbook examples of judicial restraint. In not one instance has he employed a personal conception of natural law to justify a judicial opinion. In fact, the first draft of the Alliance for Justice report making the case against Judge Thomas concluded, "His decisions do not indicate an overly ideological tilt, although they are generally conservative." It is interesting to note that in a later version of that same report, that passage is removed.

Far from being repressive, Judge Thomas has shown himself to be strong defender of free speech, even when it is offensive. He joined with Chief Judge Abner Mikva in striking down a law that imposed a 24-hour ban on indecent television. In another case, Thomas agreed that the loss of first amendment freedom, for even minimal periods of time, may constitute irreparable injury.

Finally, he has laid to rest the charge that his approach to natural rights involves a radical application of economic rights—repudiating arguments patterned on Lochner. In his review of the book changing course by Clint Bolick, Thomas comments, "At times, Bolick's libertarianism goes too far. He even endorses an activist judiciary that would strike down laws regulating the economy * * * at this point, Bolick appears to have lost sight of the higher law background of the rights he zealously seeks to defend."

Thomas has been careful to maintain that the free market, though essential, must be restrained by a belief in human rights and dignity. "Surely the free market," he wrote in 1988, "is the best means for all Americans, in particular those who faced legal discrimination, to acquire wealth. Yet the marketplace guarantees neither justice nor truth. After all, slaves or drugs can be bought or sold. The defense of legal opportunity to compete in a free market is a moral one that is presupposed in the declaration * * * in striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, or rights, or else it becomes part of the problem, instead of part of the solution."

This, I believe, is the record of a principled, moderate, thoughtful legal mind. It reveals a deep commitment to individual liberty. It shows a profound respect for the principles inherent in the founding of our Republic—the promise of the declaration and the words of the Constitution. It is a record in the best tradition of American justice.

There is no cause, or excuse, for the vindictive attacks from interest groups this nominee has been forced to endure in silence. Clarence Thomas has always faced the need to struggle against minds poisoned by hate—as a child in the Segregated South, as a student resented and taunted, and now as a target of raw bigotry and distortion. His ability to transcend these attacks is a testament to his character. The fact they still take place is a shame to our Nation.

The substantive criticism many groups have settled on—natural law—is actually our best defense of human rights and limited governmental power. They use swords that cut their own fingers. Firebrands that burn their own homes.

Perhaps, in conclusion, an answer to the National Organization of Women's shameful question is in order, "Who is this creep?"

Clarence Thomas is a man who turned disadvantage into accomplishment—and now provides an example for others to do the same. U.S. News & World Report comments, "Few Americans have started out with so little and achieved so much as the proud son of unforgiving poverty from Pin Point, GA."

Clarence Thomas is a man who has fresh memories of racial indignity and legal oppression. Thomas recalls seeing his grandfather slowly poring over the Bible so that he could pass the literacy test to vote. He knows first hand the suffering of a segregated America. "Not a day passed," he has explained, "that I was not pricked by prejudice." Experiences like these are never forgotten. And memories like these are valuable on the highest court of the land.

Clarence Thomas is a man who has more experience in law enforcement than Justice Marshall had when confirmed. Who has authored more Law Review articles than Justice Souter. Whose experience would make him the only member of the Supreme Court with a firsthand knowledge of corporate law.

Clarence Thomas is a man whose conception of natural law is shaped by the sting of its denial in his own life. Michael McConnell of the University of Chicago Law School comments:

When he points out the philosophic connections among the Declaration of Independence, the original Constitution, the speeches of Abraham Lincoln, the enactment of the fourteenth amendment and the civil rights movement of Dr. Martin Luther King, Jr., he speaks from personal experience.

Clarence Thomas is a man who has shown a career of commitment to individual rights. "My conviction," Thomas argues, "is that the most vulnerable unit in our society is the individual. And blacks, in my opinion, being one of the most vulnerable groups, should fight like hell to preserve individual freedoms."

And Clarence Thomas is a man who will also, if this body gives fair and impartial consideration, be the next Associate Justice of the U.S. Supreme Court. It is my honor to support him.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma [Mr. NICKLES].

Mr. NICKLES. Mr. President, I wish to compliment my friend and colleague, Senator COATS, from Indiana, for his well-researched and well-stated statement in support of Clarence Thomas. I compliment him for well-made and well-presented speech. My colleague from Indiana made a very good statement. I hope others will pay heed to his work.

Mr. President, today I rise in support of Judge Clarence Thomas for the U.S. Supreme Court. I commend Judge Thomas for his service to the people of our Nation. He is a proven jurist, author, litigator, and administrator. His rise to this position has been dynamic and deserved. With great courage and will, Clarence Thomas has defeated the odds of an impoverished childhood. He will bring to the bench a range of experience not shared by any other sitting Justice. He should be a role model for all Americans, for he personifies the American dream.

In the September 26 issue of the Oklahoma Eagle, a weekly newspaper published in Tulsa that represents the

views of many black Oklahomans, an editorial states:

We have written frequently in the past three weeks on Justice Designee Clarence Thomas. We are happy to endorse him and rejoice in the sharp debates that reverberate in our community as a consequence of our endorsement. We find that Judge Thomas should be impaneled for a myriad of reasons—some having a simple connection to his manifest qualifications, others have a powerful nexus to our lives and times. * * * Long live Justice Thomas * * * and a toast to a many-faceted black American.

With ringing endorsements such as this, as well as having previously passed the scrutiny of the Senate, it is apparent that many of my colleagues who would rise to oppose the nomination of Judge Clarence Thomas are possibly suffering a mild case of memory loss. Is this not the same Clarence Thomas who was confirmed to the U.S. Court of Criminal Appeals in March 1990 by a voice vote of the Senate, that is, without opposition? Is this not the same Judge Clarence Thomas who was approved by the Senate Judiciary Committee by a vote of 13 to 1 in February 1990?

What has changed over the last year and a half to cause his opposition? Has anything come out during Judge Thomas' most recent confirmation hearing before the Senate Judiciary Committee that would warrant any greater opposition now than what he had in 1990? I think the answer is "no."

We know the facts surrounding Judge Thomas' nomination have not changed over the last year and a half. If anything, he is a better jurist now than he was in March 1990. I take my hat off to him. He stood before the Senate Judiciary Committee and was under intense and extreme scrutiny. I wonder how many of my colleagues in the Senate could undergo such similar scrutiny over anything we have said, every speech we have made, or everything we have written throughout our time in public office. I commend Judge Thomas for his presence, his composure and his demeanor.

Judge Thomas' tenure as Chairman of the Equal Employment Opportunity Commission provides an excellent example of his abilities and talents. As Chairman of the EEOC, Judge Thomas was able to eliminate much of the organization's case backlog, shorten response times for new complaints, and streamline procedures to handle cases more efficiently. Thomas insisted that each case should be decided on its own merits. His understanding of civil rights and the plight of those he dealt with during his time at the EEOC will be a great asset to the highest court in the land.

Those against his nomination have attempted to focus on inflated controversy, such as taking a single line out of a lengthy speech entitled "Why Blacks Should Look to Conservative Policies" and making it into an encompassing statement on natural law and its role in constitutional interpretation.

This speech was not about natural law or abortion. It was about race and his experiences as a black conservative. Some have tried to convince Members of the Senate that to be black is to be liberal and that conservative blacks are out of touch with other blacks.

As Judge Thomas has said in his speech, "Why Black Americans Should Look to Conservative Politics," the Nation pushes the idea that "any black who deviate(s) from the ideological litany of requisities (is) an oddity and (is) to be cut from the herd and attacked." This is one of Judge Thomas' greatest traits. He has fought against those stereotypes all of his life. And he has been successful. The fundamental belief that one betters himself through family, education, and strength has molded Judge Thomas' philosophy on many issues. He should be a role model, frankly, for all of us.

Mr. President, in my opinion Supreme Court Justices are not supposed to make the law but rather interpret the Constitution. The issue is not whether Judge Thomas will give the Constitution a liberal or conservative interpretation, but if he will give the Constitution a fair interpretation based on the body of law in effect.

Despite what some of my colleagues would like for us to believe, the Supreme Court's role is one of judicial interpretation and not judicial activism. As Members of Congress it is our role to make the law, not the Court's.

Many of our colleagues are opposing Judge Thomas because they think he might overturn Roe versus Wade. Frankly, I am one that hopes that he will. Roe versus Wade is an excellent example of judicial activism. The Supreme Court, by a split decision, legalized abortion.

Mr. President, it is clear in our Constitution where the power to legislate falls. Article 1, section 1 of the Constitution says all legislative powers herein granted shall be vested in Congress.

Congress is supposed to pass the laws, not the Supreme Court. When the Supreme Court legalized abortion, basically they were passing law. That should have been a legislative function. We are elected, and if the people do not like the laws passed, they can change the elected Members of Congress. The Supreme Court, on the other hand, interprets the Constitution. They are an unelected body. They are appointed for life. Their task is not to make laws.

When the Court decided Roe versus Wade, in which abortion was legalized, they threw out State laws that restricted abortion in almost every State, and totally ignored the 10th amendment to the Constitution that says powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people.

Unfortunately many of my colleagues have come to the conclusion that if a Supreme Court nominee would vote to overturn Roe versus Wade, they are not fit to sit on the Supreme Court. In other words, those colleagues are making an argument endorsing judicial activism in which the Court makes law, instead of allowing Congress its constitutional role.

If some my colleagues want to legalize abortion. Let them introduce the legislation and attempt to pass it through Congress. They have never done so. I would encourage them to do so if they happen to take that position on this issue.

But I do not think a person should be disqualified for serving on the Supreme Court because he happens to believe the Supreme Court should not legislate, should not be a judicial activist, should not be a legislator from the bench. Legislation should be done from Congress.

Mr. President, nothing new has come out of this confirmation hearing that should raise any legitimate opposition to the judge's record. Judge Clarence Thomas is worthy and deserving of this office. He will help lead the American judicial system in the 21st century.

I compliment President Bush for his nomination of Clarence Thomas and I support his confirmation.

I urge my colleagues to do so as well.

I ask unanimous consent that a letter be printed in the RECORD.

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

NORTH CAROLINA GENERAL ASSEMBLY,
HOUSE OF REPRESENTATIVES,
Raleigh, NC, September 10, 1991.

Re Support for the nomination of Judge Clarence Thomas.

Hon. Jesse Helms,
U.S. Senator, Dirksen State Building, Washington, DC.

DEAR SENATOR HELMS: I am a native of Fayetteville, North Carolina who just happens to be a Black American. For years I have worked at the grass roots level, served two terms on the County Board of Commissioners and presently served our Great State on the North Carolina House of Representatives. As a member of the Judiciary Committee, it is my prayer that Judge Clarence Thomas is confirmed.

It is appalling and sad that groups of all color and kind have lambasted and criticized this most worthy gentleman. However, there are equally as many Black Americans who feel that Judge Thomas is qualified to serve on the Supreme Court of our fair land. I have polled the grass roots community, elected and appointed officials during the past three weeks. Because of the favorable response, a press conference has been planned to verbalize our support. Letter writing campaigns, phone calls to the 800 hundred number and networking with other supporters are the defenses used to counter the ill press which has targeted Judge Thomas. I am a life member of the NAACP. Mr. Gibson nor Mr. Hooks

represent my views nor the views of numerous others.

Should you be given the opportunity, please inform Judge Thomas of our efforts and prayers for his endurance and continued fortitude. Thank you for your indulgence and please know that there are many of us who support and applaud the nomination of Judge Thomas. We are equally prayerfully of his confirmation.

Sincerely,

MARY E. MCALLISTER,
Representative, 17th District
(Cumberland County).

ORDER OF PROCEDURE

Mr. NICKLES. Mr. President, I ask unanimous consent to speak for 6 minutes as if in morning business.

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

THE BALTICS

Mr. NICKLES. Mr. President, for 3 tense days in August an attempt by Communist hardliners to smother infant democracies in the Soviet Union demanded the attention of the world. Finally after the dramatic showdown between Communist tanks and the citizens of Moscow and other cities, the Communist coup attempt fell apart.

Democracy has not yet fully triumphed in Russia, but there is now a great hope for moving in the right direction.

In addition, the Baltics states of Lithuania, Latvia, and Estonia have now been restored as independent states and retaken their rightful positions in the community of independent nations.

We should not forget, Mr. President, that even as the Communists in the Soviet Union were falling apart, one of Europe's last Communist strongholds, Serbia, was intensifying its attack on democratic institutions in Yugoslavia, particularly against the Republic of Croatia. Communist tanks may have returned to the barracks in the Soviet Union, but in Yugoslavia not only tanks, but military aircraft and artillery have been unleashed against Croatia, resulting in hundreds of deaths, including many civilians.

The civil war in Croatia is indeed a tragedy, but it would be a mistake to think that the war is merely a product of uncontrolled ethnic passions. While ancient ethnic animosities have played a role, I think it is clear that the culprit behind these tragic events is Serbia's strongman, Slobadan Milosevic and his Communist henchmen.

By saying this, I am not blaming the Serbian people or suggesting the Serbian people are incapable of living with the Croats, as they have been successfully doing for years in many parts of Yugoslavia.

Two years ago, as communism began to crumble in Eastern Europe, Mr. Milosevic began to step up ethnic tensions as a means to hold on to power. First, he turned on the ethnic Albanians in the province of Kosova as a means of rallying Serbian nationalists to his side.

Last year he began to stir up ethnic hatred and provided material support for radical Serbs inside Croatia. While the conflict in Poland, Czechoslovakia, and Hungary was between Communist and democratic reformers, in Yugoslavia, Milosevic cleverly substituted ethnic conflict for the struggle for democracy.

Today it is clear that Mr. Milosevic bears special responsibility for bloodshed in Yugoslavia, and that he is continuing his active support and encouragement for the use of force in Croatia both on the part of the Serbian militants and the Yugoslav military.

It is even clearer that there is effectively no longer any such thing as the Yugoslav Federal Army. Its officer corps, long dominated by Serbians and beset by desertions by Slovenes, Croats, and others, the Federal army has become Milosevic's private army. Senior Yugoslav defense officials and Army officers have repeatedly ignored orders from Yugoslavia's civilian leadership.

Yugoslavia's Federal Prime Minister Ante Markovic, who is referred to in Tuesday's Washington Post as "largely powerless," has accused Milosevic of pursuing civil war with the use of Federal troops.

Last week I met with Stipe Mesic, the President of the Yugoslav Federal Government. Mr. Mesic told me that he was completely powerless to stop the Federal Army.

The war in Yugoslavia has now caused more than 1,000 deaths, and the Federal air force units, also under Serbian control, have bombed over 120 churches. Now we have reports that the Serbian-dominated air force has bombed the centuries old city of Dubrovnik. I saw pictures of this last night and the night before on TV.

Even more ominous are reports that in at least two cases the Federal army has used chemical weapons against Croatia. I have seen pictures of this fact as well.

Something has to be done to stop Milosevic. The international reaction to date, in my opinion, has been far too weak. The reaction of the U.S. Government has been too weak. The attempts at mediating the crisis by the European Community has been far too weak.

It is time to take strong measures against Milosevic's Serbian Government and any part of Yugoslavia that he controls. First, I believe that no United States aid should be provided to any Republic of Yugoslavia which has not held free and fair democratic elections and is engaging in human rights abuses.

In fact, last October, the Senate originally adopted such an aid restriction as part of the fiscal year 1991 foreign operations appropriations bill. I was the author of that amendment and I believe the Congress ought to take similar action again this year.

I understand that the Agency for International Development has suspended its aid program to Yugoslavia, but that action misses the point that there are parts of Yugoslavia which need our help, and there are areas which certainly do not merit any foreign assistance.

Second, we should impose a trade embargo, not on Yugoslavia as a whole but on all those parts of Yugoslavia under Milosevic's control.

That is why I am pleased to cosponsor legislation introduced by my colleague from New York, Senator D'AMATO, to impose a trade embargo on Serbian products.

Third, on the diplomatic front, I think it is time that the United States considered recognizing the governments of Croatia and Slovenia. I note with regret over 30 other countries recognized the Baltic States before the U.S. finally did. I hope this will not be the case here, while democratic Croatia is fighting for its life, and a strong show of support from the United States and the European Community could certainly affect the outcome.

Unfortunately, there is no hope of going back to the status quo of a year ago.

In my opinion, Yugoslavia cannot be put back together. I understand that it is the President's constitutional prerogative to decide which governments to extend diplomatic recognition to, but we should recognize reality—that Yugoslavia has permanently splintered, and we should recognize there are democratic governments and Communist governments in what was previously Yugoslavia. Let us not lump them together. Let us stand by the forces of democracy in Yugoslavia and oppose the forces of tyranny and Communism.

Mr. President, I yield the floor and 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. D'AMATO. 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. D'AMATO. Mr. President, I ask unanimous consent that I might be permitted to proceed as in morning business.

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

Mr. D'AMATO. Mr. President, as I stand before you today, the people of Croatia find themselves under siege. Tanks are moving; planes are bombing and artillery is raining down on the innocent citizens of Croatia.

It is rather ironic that at this very moment, the proud and ancient city of Dubrovnik, which is in Croatia, is being bombarded. Dubrovnik is a cultural and historical treasure. One of the last walled cities of the world is being destroyed.

The mayor of Dubrovnik has just called. You could hear the bombs in the background. The radio stations and television stations have been cut off; a massacre is underway. The Yugoslav Federal Army and the Serbian guerrillas, under the total control of the Communists and the killer Milosevic—are on the move.

Why do I say that the bombing of Dubrovnik is ironic? Because, as the Free World sits by, and as the United States fails to exercise the kind of leadership that it can, and should, and must, the forces of oppression, of dictatorship, of enslavement, under the leadership of the killer Milosevic and his cutthroats, guerrillas have undertaken a massacre. Milosevic is the butcher of Belgrade. Is it not interesting that we have dealt with the butcher of Baghdad, and now we have Milosevic, the butcher of Belgrade, who encircles this proud city, bombards its ancient churches, its schools, and it civilian population purely for the purposes of conquest. This is nothing more than a last gasp effort to hold onto power and privilege by the communists.

Mr. President, 200 years ago when the United States of America was fighting for its freedom in the Revolutionary War, when we declared our independence, as the Croatian people have declared theirs, a small country, an ancient country located in Croatia, was the first to recognize the United States of America. That country was Dubrovnik.

Is is not ironic that today, as the innocent civilians of Dubrovnik are under bombardment this great Nation has not undertaken the kind of forceful leadership necessary to work with the entire European community and isolate this killer? We must isolate the Serbian Army and its communist leadership, which is on a mission of death and destruction. It is an army responsible for the killing of hundreds, and hundreds, and hundreds of innocent civilians, be they Slovenians, Croatians, or the ethnic Albanians in Kosov.

What do these people, innocent people, want? Their desires are clear. They yearn for freedom, and they yearn to determine their own destiny. Very much like our forefathers, 200-plus years ago, who looked for freedom, and who had to stand up to the forces that would have denied them that opportunity, they now look to the outside world and say, "Will you not come to our assistance?"

I believe, Mr. President, that we have a moral responsibility to take a leadership role in recognizing Croatian people and the independence of Croatia. I believe, Mr. President, that we have a moral responsibility to recognize the independence of Slovenia, and we must recognize that the ethnic community in Kosova must and should be protected.

We must use our leadership in the world community to galvanize the European Community and others to see to it that there is an immediate cutoff of arms. We must immediately cut off all fuel so that those tanks and those planes cannot continue to maraud upon innocent people. These people only want freedom, democracy and the opportunity for self-determination.

This is exactly why Senator DOLE and I introduced legislation Wednesday which calls for the cutoff of all trade with Serbia and all parts of Yugoslavia under Serbian controls, including grants, sales, loans, leases, credits, guarantees and insurance. It also calls upon our country's officials to vote against any multinational assistance to Serbia or parts of Yugoslavia under Serbian control. I ask my colleagues to support this measure.

This is not aimed at the Serbian people. What we are talking about is Communist dictator who has lost control. A dictator who has taken the federal army and used it to suppress the honest freedom of expression, to suppress people who want to determine for themselves their own destiny, to use their own language, to pray as they see fit, and to stop the senseless marauds and bombardment of innocent civilians. Is this too much to ask?

Mr. President, 200-plus years ago, the citizens of a proud and old country, Dubrovnik, and its government stepped forth. It recognized the United States of America and the call for independence. Certainly, at this time the great Nation of the United States should not turn aside the cries for help that come from the people of Croatia, Slovenia and Kosova. The 30,000 citizens of Dubrovnik are under bombardment as I speak. Their cries should be heard. Their cries must be heard.

We should heed those cries and move with every diplomatic resource at our command to end this senseless marauding, this senseless slaughter, and recognize the God-given rights of these people to live free from the shackles of any kind of domination, free from communism, free from the oppressive federal army.

I would hope that we would move as expeditiously as possible. We owe nothing less to the people who yearn for freedom. These people who once were the first to stand for freedom for the United States, our great country. Now is an opportunity for us to repay them to demonstrate that we have not forgotten their recognition of our call for help. They now seek our help. We must help.

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

Mr. President, I withdraw.

The PRESIDING OFFICER. The Senator from Virginia.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. WARNER. Mr. President, I rise to give my second statement on the floor on behalf of Judge Thomas, currently circuit judge in the Circuit Court of the District of Columbia.

Mr. President, we are now beginning the final stage of what has been an intense, and most thought-provoking, and certainly a learning experience, for all involved. I say that, for it has indeed, for this Senator, been a learning experience—that is the confirmation process of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

The Senate, under the Constitution, shares with the President the decisions relating to the qualifications for this high post. There is no denying that it is a rigorous process, rigorous for all parties involved—Senators, nominees, and witnesses—but a process that, in my opinion, is absolutely necessary in our system of government of checks and balances.

The hearings on the judge ran for a very long time. A record may well have been set for longevity. A record was certainly set for thoroughness and vigorousness by all who participated.

Members of the Senate Judiciary Committee questioned him on every aspect of his past employment, his judicial philosophy, and his thoughts on various legal issues. Judge Thomas' answers, to the extent he could respond, I believe were fair and honest.

It must be clearly understood that a sitting Federal judge is not as free as others in a comparable situation. A sitting judge has certain constraints on his public statements be they in the context of a Senate hearing or otherwise.

I welcomed this exchange, however, between the committee and Judge Thomas, as did all other Senators, and I believe as did the majority of Americans.

His judicial demeanor and his firm approach to answering the questions posed to him enables the Senate now to know a great deal more about him, his philosophy, and the approach that he will take to this high office if confirmed.

The importance of ths process cannot be understated. It allows us, the Senate as well as the American people, the best possible opportunity to have a better knowledge of a nominee who, by law, can sit on the Supreme Court for a life term.

This "advise and consent" power, specifically granted to this body in article II of the Constitution, is the main check we have on executive nominations. We are now in the final stages of

what I view as a three-stage process. First, the nomination by the President, followed then by the Senate Judiciary Committee hearings before which the nominee appeared and, in this instance, so did a very numerous and wide cross-section of witnesses. Of course, during the course of those hearings we also heard the expressions and opinions of the members of the Senate Judiciary Committee.

The committee then reviews and makes a record and reports to the Senate as a whole. That is followed by the debate which now is taking place on the floor of this Senate preceding the final vote which will take place next Tuesday. At that point it will be my privilege to cast a vote for Judge Thomas, for, in my judgment, Judge Thomas has met the Senate's stringent criteria to sit on the Supreme Court. The Senate will confirm not only Judge Thomas but confirm the judgment of the President of the United States exercising his authority again under article II of the Constitution to make this appointment.

He not only receives my vote but my confidence that he will perform responsibly.

Mr. President, I began this process with an open mind. I had met Judge Thomas on several occasions in the past, including the year in which he was nominated to serve on the U.S. Circuit Court for the District of Columbia. Since he resides in Virginia, it was my privilege to join other Members of this body in presenting him to the Judiciary Committee and, indeed, the Senate as a whole.

Mr. President, now after weeks of hearings and Senate deliberation, during which I listened very carefully to the views of my colleagues together with Judge Thomas and the many witnesses who appeared, I know a great deal more about this outstanding American.

I traveled, as part of my responsibility, throughout Virginia, stopping at almost every major metropolitan area, and hosting private meetings with a wide range of Virginians to receive firsthand, and in a confidential manner, their views. I have taken their thoughts, their opinions, and their pleas to heart, both those for and those against Judge Thomas.

Mr. President, Judge Thomas' childhood and upbringing is now common knowledge. It is an extraordinary American chapter of survival of hardships and courage in overcoming those hardships, and his acknowledgment—and I underline his acknowledgment—that his success in life can be attributed to the helping hand of many other individuals. All of that taken together greatly strengthened my opinion of this fine person. He will not, I hope, forget, as he labors on the Court, to help others.

No amount of judicial wisdom or legal knowledge can replace or substitute for those teachings and learning experiences in early live. This upbringing will serve him well on the Court and will lead to his making a fair, compassionate, and thoughtful Justice, as he interprets the laws of our land.

Mr. President, I am pleased that we are now engaging in the last leg of the nomination process. I hope that this debate will be full, fair, objective, and very deliberate. Thus far it has been.

I am confident that Judge Thomas will emerge a more knowledgeable person. I know I am, about him, and about the depth and the sincerity of the fears and the hopes and aspirations of those who were for and against him as expressed to me privately and expressed during the course of this nomination.

Mr. GORTON addressed Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am here this afternoon to join the endorsement of Judge Thomas to the Supreme Court of the United States with my distinguished friend from Virginia and with many other Members of this body during the course of the last 2 days.

This is a solemn and important duty. Some may argue that there are few duties more significant which fall to Members of the U.S. Senate than to confirm or reject nominees to the Supreme Court of the United States. This is particularly true with Judge Thomas who is likely, if confirmed, to serve on the Supreme Court of the United States for a period of time longer than the service here in the Senate of any present Member of this body.

It is, I suspect, for just that reason Justices of the Supreme Court have such a profound influence over the lives of the people of the United States. Because they serve so long, we as Senators have never truly settled on the precise role of Members of this body in this confirmation process.

It is unlike the confirmation of an individual to serve in an executive position at the pleasure of the President, a position in which very few individuals serve beyond the term of the President who has appointed them. It is much more profound than even the confirmation of those who are appointed to serve fixed terms on various of our regulatory agencies. It is more profound than appointments to other Federal courts which are, after all, under the supervision of the Supreme Court of the United States.

As a consequence of the importance of the issues which come before the Supreme Court and the importance of the individuals who occupy the nine positions on that Court, debate over particular appointments has been fierce from the beginning of the Republic to this very day. Some have argued for almost total deference to the selections of a particular President. Others have argued that the importance of a single Senator is as great as that of the President of the United States and that we have an absolute equal right to substitute our own judgment of what single individual is best qualified for this position, as does the President of the United States himself.

The ultimate answer to that question, of course, is that this is a subjective judgment which each Member must make for himself or herself. How much deference should he or she give to the judgment of the President? How much deference should each of us give to our own predictions of where a judge will come down either with respect to his general judicial philosophy or on particular cases?

A number of speeches have been made, both on this floor and off this floor, about the highly inconsistent positions of a number of Members of this body who have served longer than have I and longer than has the present Presiding Officer. The earlier words of Senator KENNEDY, the distinguished senior Senator from Massachusetts, are often quoted against his current position and he has been asked why he will not impose a test no heavier on Judge Thomas than he did many years ago on his predecessor, Justice Marshall. But on this side of the aisle, exactly the same 180-degree turns as to the degree on which individual issues may be considered has marked the progress of several of our senior Members, including the most senior Member on the Republican side on the Committee on the Judiciary. Those illustrate, in my opinion, Mr. President, not so much grounds on which to criticize individual Senators as grounds on which to reflect on the importance of the process in which we are engaged at the present time.

I do feel, however, that there is one element in this debate which is appropriate to say; that certain considerations should not weigh heavily or govern the vote of a Senator on a nomination of this sort. That element is the single-issue test: how we predict that this individual will vote on the future of Roe versus Wade or half a dozen other precedents which have been cited to us in the past.

I must say, Mr. President, that I was particularly impressed in this regard by the remarks of my wonderful friend and counsel, the senior Senator from Oregon, on the floor here yesterday afternoon. All who know him know that Senator HATFIELD is passionately opposed to the death penalty. All who have followed the Supreme Court know that Justice Marshall took that position. Judge Thomas, by contrast, has said that he has no philosophical or constitutional objection to capital punishment.

Senator HATFIELD, in his remarks yesterday afternoon, said that Judge Thomas' position on the death penalty not only was not an inhibition with re-

spect to his support for the nominee, it was simply not a relevant consideration. Rather it is the character and background and thoughtfulness and philosophy of the nominee which is of vital importance, not agreement with the views of the senior Senator from Oregon on one particular issue, no matter how passionately the Senator from Oregon believes in that position.

I am convinced that that is the correct attitude toward a nomination of this sort. I go beyond such agreement or disagreement to cite some of the rules that relate to judicial nominees, and perhaps even to one of the greatest precedents, because of the greatness of the individual who has dealt with it.

Well over a century ago, President Abraham Lincoln observed, under circumstances similar to those with which we are faced today:

> We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it.

We can go beyond President Lincoln, however, and simply reflect on the fact that the reason for that is that what is required of our jurists is an impartial balancing on the scales of justice of the facts and circumstances which come before them. The United States Code in this connection states:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

That is the law. A precise answer to such a question by a nominee would disqualify him from dealing with that question when it came before the Court and, by implication, would raise serious questions as to his qualifications to hold the position at all.

Last year at about this time, the Senate was debating the nomination of David Souter. Let me quote from the report of the Judiciary Committee on that nominee:

> 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. (Emphasis supplied.)

No, Mr. President, we must obviously go beyond our prediction of the way in which a judicial nominee may act in a case which may come before him in the future. And we clearly cannot appropriately demand that he precisely answer a question on such a subject.

So where does that lead us? It leads us to what I think is at least an appropriate concern with the general legal, judicial, and constitutional philosophy of a nominee, a consideration which I have always felt to be appropriate in making such a judgment as we debate such a nominee here.

In this connection, I find the recent history of nominations to the Supreme Court of the United States to be particularly frustrating. It was exactly that debate over a general judicial philosophy which so enlightened the people of the United States in connection with the nomination of Judge Robert Bork to the Supreme Court just a very few years ago.

That Judge was more than willing to engage in a philosophical debate with those who backed his nomination and with those who opposed it. He obviously had been very prominent in an academic debate over issues of great importance to the nature of our law and of constitutional interpretation over the years. And his reward for engaging in that philosophical debate was to be savaged in committee, on the floor of the Senate, and in the public press.

I believe it perfectly appropriate to have felt that Judge Bork's judicial philosophy was so inconsistent with that of a given Member of the Senate that that Member of the Senate could not support him. What I found so critical and so negative in that debate, however, was the characterization of his views as being so far out of the mainstream that they could not be considered by any reasonable person. That characterization made a negative vote much easier than would have debate over judicial philosophy itself.

But we now have the inevitable consequences of the nature of that debate over Judge Bork. We now have Justice Souter, who was denominated, perhaps unfairly, the "stealth" nominee. And we have a nominee here today before us who has been very careful to speak in the broadest generalities during the course of his nomination hearings because he had a well-founded, not just fear, but knowledge, that the more specific he was, the more his views would be used against him.

So the frustrations which many have felt with the nature of that nominating process were frustrations which have been created by the very nature of the process itself, and as a consequence leave us with less than many of us would desire in the nature of an intellectual debate and repartee to be found in the records of the Judiciary Committee.

In this connection, and in connection with the refusal of Judge Thomas to make specific commitments on specific issues, I can do little better than to quote from the testimony before the Judiciary Committee of Senior Judge Jack Tanner.

Judge Tanner was the first black individual to be appointed an article 3 Federal judge in the Pacific Northwest. He is now a senior judge in the Western District of Washington and is, I must say in all candor, an individual with whom I have had many disagreements, both political and legal, during the course of his career. But I feel that he made a most impressive presentation before the Judiciary Committee, and I should like to share it with my colleagues.

I am now quoting Judge Tanner:

> [I] am here because of the most intense, unprecedented, and harsh opposition in the history of this country to a nominee to the Supreme Court of the United States. The attacks have now also shifted to Members of the Senate. There is no logic or reason for the attacks, whether it is on the right or the left. They are emotional attacks based solely upon passion and prejudice, neither of which has any relevance to the qualification of fitness of the nominee. * * * The opponents of Judge Thomas' nomination are concerned that he might do this or he might do that or that his confirmation will lead to some ideological shift in the Supreme Court, or that he is somehow outside the mainstream of legal thinking, yes, and political thinking in this country, just because they do not agree with his sense of values of judicial philosophy, whatever it may be. * * * What is certain and known about Judge Thomas is that he is independent and can't be put into a category. He is just where he should be. Speculation and hysteria as to what the nominee might do should not disqualify him from the Supreme Court. After all, no other nominee has ever been disqualified for such reasons. Judge Thomas understands very well the rule of law.

When one goes beyond an examination of general legal and constitutional philosophy, one, I suspect, is then left with the fundamental bedrock of judgment of any individual—whether for a vital position such as Associate Justice of the Supreme Court of the United States or in ordinary life—and that is the character and strength and experience and learning of a particular individual. It is because of my tremendous admiration for Judge Thomas' character and for his experience and for his life that I am so enthusiastically in favor of this nomination.

Judge Thomas, I suspect, almost certainly comes from the most underprivileged background of any person who has been nominated to a position on the Supreme Court of the United States in the more than 200-year history of that body.

Born the grandson of a black sharecropper, growing up in a segregated South, surmounting many of these difficulties because of the love of members of his family, of his teachers, and of his church, Judge Thomas has already come infinitely further than he could have been expected to have come by reason of his birth or that many of his contemporaries have been able to come.

Not only has this been the life history of Judge Thomas, but coupled with the struggle to overcome adversity, it has been his originality of thought and of experience which are not only notable but which have brought some of the opposition with which he is faced here. Judge Thomas almost from the beginning of his life has dared to be different, has dared to

examine and frequently to reject the common philosophy of many of his contemporaries. He has, quite obviously, thought about and examined all of the ideas and ideals upon which this country and its society has been based. He has reached conclusions which differ from many of his contemporaries, and for all practical purposes, from all of his critics.

His is a journey which is not yet complete by any stretch of the imagination, he being only in his early forties. His conduct, his philosophy, his direction as Justice on the Supreme Court is perhaps more difficult to predict than that of previous nominees, many of whose lives on the Court indeed have been difficult to predict. But it is that very background, it is that struggle, it is that willingness to examine all premises, it is that willingness to be different which are not only not a disability in the nomination of Judge Thomas but which are an important part of the reason for his qualifications.

As a consequence, Mr. President, I am not here today to offer different support to this nominee. I am not here today to say that I support him because the President nominated him and we should weigh the President's views very heavily. I am not here to say that although there may be men and women who are better qualified, he is sufficiently qualified and therefore we should go along with this nominee, that a successor nominee might not be as good.

No, Mr. President, I am here speaking for Judge Thomas today because I believe firmly that he has the potential to be a great Justice; that he has grown immensely in the past and has the potential to grow in the future; that he brings to the Court a different background, a different set of experiences, some different attitudes than his predecessors on the Court; that his feeling for people will be deep, profound, and great; that he will not only be an adequate Justice of the Supreme Court but I have every hope and every expectation, a great Justice of the Supreme Court. I believe firmly and enthusiastically that he should be confirmed by this body next Tuesday.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are on the nomination of Clarence Thomas.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there be a period for morning business until 4:30 p.m., with Senators permitting to speak therein.

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

Mr. DOLE. Mr. President, my remarks today will be brief. It is no secret that I think Clarence Thomas should be confirmed and it is no secret that he will be confirmed next Tuesday.

This Senator saw no reason why we could not vote today or Monday. In any event, the vote will fall on Tuesday. We have had 2 days of pretty good debate. We have two more days of debate next week.

There are 4 days in which opponents of Judge Thomas can continue their desperate search for reasons to vote against such a truly outstanding public servant.

And, as the American people saw during the confirmation hearings, the truth is there are no good reasons to oppose Judge Thomas.

Americans saw a man of rare courage, whose character was forged in a childhood of poverty in the segregated South.

They saw a man of intelligence, who has distinguished himself in every branch of Government—legislative, executive, and judicial.

They saw a man of integrity, who, throughout his life, has remembered from where he came, and stood up for what he believed.

They saw a man who will hit the ground running, and make a contribution on the Supreme Court right from the start.

Americans also saw a parade of witnesses testify for and against Judge Thomas. There were the usual cast of characters from the usual liberal special interest groups, giving their usual reason for opposing every nominee who does not march lockstep with their views.

But the most important and telling testimony was from people who actually knew Judge Thomas.

Sometimes it is good to hear from people who knew the nominee, who grew up with the nominee, who knows what he is all about.

Testimony from the nuns and professors who taught him, from the men and women who worked with him, from our distinguished colleague, Senator DANFORTH, who has served as a mentor and guiding light throughout his career.

Each of these witnesses told of a diligent student, a loyal friend, a gifted attorney, a man with an open mind and an ability to understand real life people and their real life problems.

Mr. President, the speeches I heard this morning from a few of my colleagues reminded me of 10 years ago this fall, when the Senate was engaged in a debate over another Presidential nominee.

Then, as now, some of my democratic colleagues rose to tell this body that yes, the nominee was a distinguished and courageous gentleman, but they simply could not support him.

In an impassioned speech delivered on this floor on November 16, 1981, the Senator from Massachusetts [Mr. KENNEDY] declared the nominee had a "total absence of training or experience."

The real reason behind the opposition, however, was that the nominee had, in the past, spoke out against abortion. Senator KENNEDY declared the nominee to be "insensitive to issues affecting women," and someone who would "stand against the effort of women to achieve equal rights."

The Senator from Ohio [Mr. METZENBAUM] rose to agree that the nominee was inexperienced and unfit. But—and listen carefully, because you will be as surprised as I was to hear these words—Senator METZENBAUM declared that the nominee's position on abortion did not influence his opinion.

Indeed, Senator METZENBAUM said—and I quote, because I want to get every word correct, "I believe to judge any person for public office or for confirmation on the basis of a single issue is unfair * * * unintelligent * * * and un-American."

Contrast this statement with Senator METZENBAUM's crusade to pin Judge Thomas down on his views on abortion, and it is clear that while history may repeat itself, the distinguished Senator from Ohio certainly does not.

The nominee, Senator KENNEDY, Senator METZENBAUM, and Senator BIDEN, I might add, opposed as inexperienced—the nominee these Senators opposed as a conservative idealogue—was President Reagan's nominee to be Surgeon General of the United States, Dr. C. Everett Koop.

I may not have agreed with every decision made by Dr. Koop, but no one can deny that he was the most effective and courageous Surgeon General of our time, and no one can deny that he was about as far from a conservative idealogue as you can get.

So the liberals who opposed Dr. Koop's nomination would eventually eat a lot of crow. They were wrong 10 years ago, and they know it.

And they are wrong in opposing the nomination of Clarence Thomas, and they and the American people know it.

WE NEED TO REDEFINE THE MEANING OF CIVIL RIGHTS IN AMERICA

Mr. DOLE. Mr. President, when the Senate turns to the civil rights bill later this month, we will have a lively debate over legal abstractions like "disparate impact," "business necessity," "burden of proof."

These terms may mean something to the American Trial Lawyers Association, but—when all is said and done—they will mean very little to those in black American who must face the bitter realities of unemployment, crime, inadequate housing, and the lack of educational opportunities.

Let us face it, the pending civil rights bills will not create a single job.

They will not put a single criminal behind bars.

They will not build a single unit of affordable housing for a low-income family.

And they will not improve a single school, or give a single disadvantaged kid a quality education.

Those are the facts, Mr. President, but the facts have been lost in the rhetorical battle over H.R. 1 and the other pending civil rights bills.

In light of their professed commitment to H.R. 1, I was surprised to learn that my Democrat colleagues in the House have proposed to cut funding for the U.S. Civil Rights Commission, the official watchdog of civil rights in America.

President Bush's Office of Management and Budget had requested nearly $11 million in funding.

The Senate recently passed a bill, introduced by my distinguished colleague, Senator HATCH, that authorized $7.6 million for the Commission.

But the Democrat-controlled House of Representatives has, instead, opted for a slash-and-burn strategy—authorizing only $6 million—an amount that Commission Chairman Art Fletcher says will leave the Commission sorely underfunded.

Although the reasons for the funding cut are fuzzy, it appears that the Commission is being fiscally punished for failing to walk lock-step with the liberal civil rights agenda.

To its credit, the Commission has begun to study such radical ideas as self-help, economic empowerment, capital gains tax reductions to help the disadvantaged, enterprise zones, and colorblind affirmative action based on economic status—all tough medicine for those who have spent a lifetime peddling the message that the only source of hope is Big Brother Government.

Mr. President, we are—and should be—a nation of laws, but we are fast becoming a nation of litigants.

Unfortunately, the biggest beneficiaries of H.R. 1 and the other pending civil rights bills will be the lawyers, not those Americans who have—regrettably—been denied a piece of the opportunity pie.

While Congress spins its wheels and keeps the lawyers in business, I applaud the Civil Rights Commission for confronting reality, and for having the courage to seek real-life solutions to the opportunity gap in our society.

UNANIMOUS-CONSENT REQUEST—S. 1791

Mr. DOLE. Mr. President, I said earlier today before we adjourned that I would present a unanimous consent request, and I also personally told the majority leader, because I did not want to surprise anyone.

I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 1791 and ask for its immediate consideration.

Mr. SARBANES. Mr. President, I object and, at the appropriate time, I am going to explain the reasons for the objection.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, I cannot thank the Senator from Maryland, but I do want to make a point I made earlier today.

We have had a lot of charts, graphs, and maps and all these things out on the floor.

Mr. SARBANES. We are going to have some more.

Mr. DOLE. Good. I am sorry I will not be able to wait and see them.

Mr. SARBANES. I regret that.

Mr. DOLE. Let me suggest if you are unemployed, I do not think the people who need help saying I wish they would pass that Democratic plan. I wish they would kill that Republican plan. I wish they would get me some money is what they are saying. They are not worried about whether it is a Republican, a Democratic plan, or about charts and graphs.

In fact, I suggested yesterday the chart we ought to have is a calendar. We ought to show a calendar, a great big calendar. It has been 34 days since benefits would have begun under a bill we offered my colleagues on that side of the aisle—a bill that will pay for itself. That is heresy around this place—to pay for anything.

We want to pay for it. We have a way to pay for it. My colleagues on the other side insist on loading up the deficit another $6.2 billion. They just cannot bring themselves to pay for anything. Charge it to your grandchildren—somebody's grandchildren.

The President said this morning he would sign the bill, I want to get it discharged from the Finance Committee, and get it considered and passed, voice vote, and send it to the House. They can pass it next Monday or Tuesday. The benefits can be flowing by next weekend. If 6 weeks or 10 weeks prove to be too little, we will find a way to pay for additional weeks of benefits.

Remember, there was a budget agreement. We see all of these charts and graphs and how much money is in the trust fund, that is what the trust fund is for, but the trust fund was there when we had the budget agreement. We will hear this. We do it for everybody, all the people in America. We think we have set the record straight on that.

We have mistreated those who served in the gulf. We treat them like we treat other people who leave their jobs involuntarily. We think that record has been set straight.

Mr. President I regret the objection, though not surprised, and we do it to make a point. We are at an impasse. I do not know why we do not send the conference report down to the President of the United States. Why is it being held by the Democrats? If they really want to help the unemployed they ought to send this conference report down to the President. He can veto it, and then maybe we can come together on a package that will help. I just suggest that I understand that it may not even be sent to the President until late next week or later.

What do you tell the unemployed worker in Topeka, KS, or anywhere else? Well, I'll tell you. Let me explain this to you. You are out of work. You do not have any food. Let me tell you about this procedural problem we have in the Senate of the United States. He can care less. His children could care less.

Had the unemployment figures gone up this morning, the conference report would have been on its way to the White House by now. But they dropped.

So if my colleagues are a little bit in a quandry, they do not know what to do, they thought they were going to go up, but they went down and not up—they are still too high—they are now trying to figure out some other strategy while they play this little game with America's unemployed.

What is wrong with paying for unemployed benefits now? It seems to me the question is pretty simple. We can pick at each other's programs. We have one that will pay for itself. If my colleagues on the other side have a better idea about how to pay for it, and not raise taxes—pay for it by spending restraints and something other than defense—then I think we will be able to strike a bargain.

But again next week is going to be an abbreviated week—here Monday, Tuesday, out the balance of the week, not in again until the following Tuesday. I would hope that we could have some action on this that the President will sign on next Tuesday, or Wednesday, or Thursday of next week.

So I know there are a lot of politics in this measure. I am not contriving anyone. We have a plan that we pay for. We have a plan the President will sign. My colleagues, the Democrats, have a plan that will cost $6.2 billion, and it would add to the deficit. The President will not sign it. That is the basic difference. They have more generous benefits. They have more charts. They have a lot of charts, but no jobs.

Where is the highway bill? There are 22,000 more jobs they are going to lose because the Democratic House will not act on the highway bill. Are we going

to be blamed for that? Are you going to blame President Bush because 22,000 workers have—eventually 87,000 workers—are going to be out of work when they ought to be building highways? Why? Because the Democrats in the House did not raise taxes in the highway package, and now they do not know what to do. They wanted to raise the gas tax 5 cents, which was a nonstarter in the Senate on both sides of the aisle. So I guess they will blame President Bush if the highway workers start lining up for unemployment benefits.

The luxury tax—there is another great idea. I do not know how many thousands of people are out of work. They thought they were going to go after the rich. So if you bought a boat over a certain amount, bought an airplane, or an automobile, or bought some jewelry, or a fur coat, where are we going to soak the rich? Is that fairness? What we have done is put a lot of people out of work.

No one's buying any boats. I understand there are 9,000 or 12,000 people out of work in the boat industry because of the luxury tax. Many are out of work in the car industry because of the luxury tax.

I have been visited by jewelers and furriers this week, and I know we make airplanes in my State. But people are out of work in my State because of the luxury tax.

What effect did it have on the rich? None. They can now take a trip to Europe. They can buy it in Europe, and they can pay for that trip with the money they would have had to pay for the luxury tax. That's a great idea. They can go to Canada. They are not paying a luxury tax, not very many. They are not buying American products.

So if you get an all-expense-paid vacation and can buy your jewelry, a new car, or a fur, somewhere else other than in the United States, that's not a bad deal.

It is all made possible because the Democrats insisted it ought to be in the budget agreement. So we could say we are going to go after the rich people.

You ask the guy that works in the boat factory who has no job how he feels. Ask somebody in Wichita, KS, who does not have a job who used to make airplanes. Ask somebody who was in the jewelry business, or furrier business—whatever it may be—whether he feels bad about the luxury tax that helps the rich? He's out of work and the rich are going overseas to buy their goods.

So again it's pretty hard to keep up with trying to create enough jobs. President Bush has a hard time creating enough jobs, when my colleagues on the other side insist on incentives to add to the recession. You would think there wasn't a recession.

We passed a bill the other day by a 2-to-1 margin to tax business again. Boy, what a plan that was. It sounds good.

We talk about the recession. We talk about getting a recovery going again. What do we do? We say we are going to put another tax on business.

We have a great idea called the 90-day family leave plan, mandated by the Federal Government. The Federal Government is going to reach into Maryland, Tennessee, South Dakota, and Kansas, and they are going to tell employers of 50 or more employees, you are going to give 3 months leave every year. You are going to continue to provide health benefits, and it makes no difference whether you are married, married with children, whatever age you are. There is no exemption. Everybody gets 3 months. That is a tax on business. If that passed, we would have more people out of work.

So what will be the response on the other side? We have a plan for that. Let us go into debt and let us provide unemployment benefits.

My view is we ought to be creating jobs and creating opportunities.

So it seems to me that sooner or later the American worker is going to understand why he is out of work. Why did he lose his job? I would tell him to take a look at the luxury tax, take a look at the mandates—family leave—which sounds good, everybody is for family leave. But let the employer work it out with the employees.

Eighty-nine percent of the employees in a recent survey said let me work it out with my employer. Let us not have the Federal Government do it. Only 1 percent in the Gallup Poll said it was even a matter of highest priority for them.

So I know that my colleagues on the other side get 99 percent of the labor support. They have to go through these things to keep that labor support.

So while they are putting people out of work on the one hand, they are trying to provide unemployment benefits with the other hand, and they are charging it to their children and grandchildren. We do not think that is the way it ought to be. With a $3½ trillion debt, we think we ought to say: enough is enough.

So I just suggest that there ought to be some way to address this problem without raising taxes and without charging it to the deficit. That is what we have done. Maybe it is not perfect; maybe it can be improved. But I have not heard many people saying we ought to give any spectrum frequencies.

The Washington Post made $170 million on something they got for nothing. I did not hear them talking about the rich when that happened. They editorialized against our proposal. Tighten up student loans. If you are 21 years of age, you ought to have a credit check. Everybody else does.

So there are ways we can save money now and provide benefits for the unemployed. That is all we are trying to do.

Mr. President, I want to thank President Bush for saying again this morning in his press conference that he would sign. S. 1791, the Dole, Domenici, Roth, Seymour, Bond, Danforth, et al. proposal. Six weeks for everybody. Ten weeks for some. It pays for itself. It is about a $2 billion package.

Mr. President, I thank my colleagues for listening or tolerating what I said. Thank you.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I say to the Republican leader, we certainly listened. It was not a question of tolerating it. I was interested in hearing the litany. I know it is late on a Friday afternoon. I assume unburdening himself this way helps him to enjoy the weekend. I was surprised we did not get capital gains into that litany as well. We can save that for another time.

Let me just say one thing about the family leave bill. I am going to come back to unemployment in a minute, but I think a mistaken impression was left. The impression was that you could automatically get 90 days of unpaid leave every year.

First of all, it is very important to make the point that this is unpaid leave. Most of the European countries have paid leave under similar circumstances. The only thing that would be involved here that carries any cost would be the maintenance of health benefits. But other than that, this is unpaid leave. You are not automatically entitled to it. You have to go through a very stringent screening process to demonstrate that you have a sick child, a sick spouse, or a sick parent, and that your presence is required in order to help bring them back to health.

When in this country are we going to get to the point when parents are not put to the choice between looking after their sick child and their job? How much longer are we going to go on confronting people with that dilemma? The other advanced industrial countries have family leave programs much more extensive than the one that was in the bill that passed the Senate just the other day. In fact other countries continue the employees' pay for a period of time while they look after a sick child.

We hear this talk, about family values and being profamily from the other side of the aisle, and we cannot have a reasonable amount of unpaid leave. You are saying to people, you will not lose your job. You will be entitled to go back to your job. Your employer cannot fire you, because you had to stay home with your child, or felt you had to be there to nurse the child through

this illness. Your employer cannot fire you, but you are not going to get paid. The European countries give leave to their employees and they pay them. Those are countries with which we are competing.

So, as a matter of plain human decency, the Family Leave Act tries to take some of the stress and strain off of American families without placing a burden on American employers. Many employers have such arrangements with their employees, and I salute and commend them. Some do it voluntarily. Others do it when they negotiate labor contracts. But there are sufficient instances in which that is not done to make it reasonable to try to have some legislation to address that issue.

Mr. President, let me turn to the unemployment insurance issue. In August, almost 2 months ago, the Congress sent to President Bush legislation to pay extended unemployment insurance benefits, to address the problem created by the recession for the long-term unemployed.

All that was required under that legislation for it to take effect and for the benefits to flow to the unemployed was for President Bush to declare the unemployment situation an emergency.

Mr. President, earlier this year, had come to the Congress and sought an emergency declaration in order to send assistance overseas, to address what he saw as emergencies in other countries. The Congress agreed with the President and said it is an emergency, and the assistance went outside of the limits of the budget.

All we asked the President to do in August was to perceive an emergency here at home with the unemployed so that the benefits could flow to the long-term unemployed people who have exhausted the basic 26 weeks of benefits and now face the problem of whether they are going to have any income in order to meet their expenses.

The essential argument for doing that is the fact that the trust fund to pay unemployment insurance benefits is running a large surplus. The balance now is over $8 billion. These are taxes that have been paid into this trust fund by employers specifically for the purpose of paying unemployment insurance extended benefits.

The covenant between the Government and the employer and the employees that led to the adoption of the system and the payment of those taxes was that they would go into the fund committed for the purpose of paying extended benefits. The premise of the system is that you build up this balance when unemployment is low and when it is high, as you go into a recession, you draw from the fund and use some of this balance in order to pay the extended benefits.

You do not get into arguments about how to fund it. That has already been provided for, and the people have already paid for it. The money has already been paid.

We are not paying the extended benefits in this recession. We did it in previous recessions. In 1974–75 there was a dramatic increase in the number of people receiving extended benefits. The same thing happened in 1980, the same thing in 1981–82. Presidents Ford, Carter, and Reagan; Republican, Democratic, Republican all provided for extended benefits. Nothing partisan about this. There it is. Three past Presidents.

This time, with President Bush, we are barely paying extended benefits. Only 14,000 people in America are receiving extended unemployment insurance benefits. Even though the trust fund into which taxes were paid for the purpose of paying extended benefits now has a balance of over $8 billion and by the end of 1992 is expected to go to $10 billion.

Mr. President, we think that this trust fund ought to be used for the purpose for which it was intended. It ought to be used for the purpose for which the people paid in those taxes.

Senator DOLE has an alternative proposal. I just want to point out there were no alternative proposals around until some of us on this side of the aisle began to address the problems of the unemployed. This issue did not come on the public agenda because President George Bush said there is a problem and we have to do something about the unemployed in this country. It did not come on the agenda because Senators on the other side of the aisle said there is a problem in this country with respect to the unemployed, and we have to do something about it. It came on the agenda because Senator BENTSEN and others of us said we have to do something about extended benefits. Everything we have heard from the administration, from the other side, has been a reaction to that and much of it, certainly in the early days, was an effort to move the whole thing off track.

Dick Darman, the Director of OMB, does not think there is a recession. He said as much last week on a talk show. The administration has been saying this is a short and shallow recession. It is not short and it is not shallow and it is serious business.

President Bush, who could find an emergency to go outside of the budget ceilings to send resources overseas, has refused to find an emergency to help unemployed American workers.

Let me just very briefly speak about the Dole proposal. I see my colleague from Tennessee, the very distinguished chairman of the Budget Committee, is here, and I know he wants to address this as well, and in fact, he did so this morning and did so very eloquently.

I am going to develop this in some detail, but let me just make these points and then I will yield to the Senator and then perhaps we can both address it together.

The Dole proposal is inadequate in its benefits. The Bentsen proposal has a reach-back provision which is very important. In other words, it reaches back to cover people who exhausted their benefits as of March 1 and makes them eligible, if they are still unemployed, for 7 to 20 weeks depending upon the unemployment level in their State.

Second, the Bentsen proposal addresses the problems of our servicemen and women in a more complete and comprehensive way than does the Dole proposal. So if you really want to address the American military, the men and women who have served us, in terms of their difficulty in making a transition back to civilian life and finding a job, the Bentsen proposal and not the Dole proposal accomplishes that.

Third, the Dole proposal on paying for these benefits. I just want to underscore this because what you have here is, first of all, Senator DOLE proposes to pay for these benefits by extending existing law that allows the IRS to withhold income tax refunds from people who have defaulted on their student loans. That is a good idea. I support withholding income tax refunds from those people who have defaulted on their student loans. What Senator DOLE does is wonderful. That bill was due to expire in 1994. So he is going to extend the bill for 1994, 1995, and 1996.

Then, by a wonderful calculation, they then impute a current cash value to the extension of the legislation under so-called credit loan reform. What they say is you have this loan out there, and now we are extending this so we will get more of it back and therefore, because we are going to get more of it back, we are going to give a bigger value to the loan right now.

Not a penny, by definition not a penny will come into the Treasury right now. He is talking about 1994, 1995, and 1996.

You impute current cash value to the funds received in the mid-1990's. Oh, it is a wonderful device. I am torn between criticizing it and simply marveling and accepting it. I mean, maybe we ought to extend it not to 1996 but to 2050, and then see how much current cash value we could impute by the fact that it has been extended out to 2050. I say, Mr. President, this offers up boundless opportunities.

The other thing that the minority leader has done is to sell part of the electromagnetic spectrum. They would force part of the eligible spectrum to be sold immediately in the coming year.

Most of the experts who have looked at this tell us that this quick fire sale would result in billions of dollars actually being lost to the Treasury. The

way to address this issue is if the spectrum were to be sold it should be over a longer period of time, to maximize the values of these assets. By doing it that way, you would not get as much immediately but it is estimated you would get several billion dollars more than would be realized if you engaged in a fire sale and sold it all at once.

So much for the so-called self-financing aspects of this bill, the financing mechanism.

The Republican leader wanted a unanimous-consent request to bring the bill up right now. We had an agreement before: there would be no votes today or Monday. There are many of us who think that this bill, the Dole bill, is woefully deficient on both counts, both on its benefits and on its financing mechanism.

Mr. President, I see the distinguished chairman of the Budget Committee here, and I am going to yield to him and hopefully engage in a coloquy with him as we move along here.

I yield the floor.

Mr. SASSER. Mr. President, I thank the distinguished Senator from Maryland for yielding.

In listening a moment ago to my friend, the minority leader, for whom I have great respect, and I might say, Mr. President, considerable affection—I have served in this body now for well over a decade with the minority leader and have come to view him with considerable respect—but in listening to his argument, I was struck by an admonition given to me years ago by an old senior partner of mine in a law firm when I first started practicing law. he said, "Young man, if the facts are against you in the case, then argue the law." He said, "If the law is against you, then argue the facts." And he said, "If both are against you, then attack the opposing lawyer."

Well, Mr. President, I would submit in this case, the facts are against the distinguished minority leader's case. Oh, I know what he is trying to do. As the Senator from Maryland said, the President and this administration showed no concern for the millions of unemployed until this body passed a bill to extend unemployment benefits, as we have done in every other recession since World War II. The President chose not to sign that bill and extend those unemployment benefits.

And then we came with another bill to give relief to those suffering from the unemplopyment that is all across this country. And then, in an effort to support the administration and the President, the minority leader and others on the other side of the aisle have contrived a fig leaf to use to try to persuade the American people that they also have a proposal for those who are unemployed.

Now, I will be frank to say, Mr. President, if I thought for one instant that this proposal that comes from the other side of the aisle that is advanced by the minority leader would meet the needs of the millions of unemployed who have lost their jobs through no fault of their own and exhausted their unemployment benefits, if I thought for one instant that would get the job done, then I would urge this body to adopt it today on a voice vote.

But when you examine the proposal that is being offered, you see that it falls woefully short and is indeed simply a fig leaf to cover the inaction of the administration in meeting the needs of the unemployed.

Let me give you an example of what I am talking about. Here is a chart. Some do not like these charts because they graphically illustrate the problems and the shortcomings of the minority's unemployment bill. We see that there are 1,740,000 who have exhausted their unemployment benefits at the present time. We see that the Bentsen bill that this body passed by a large majority, a bipartisan majority and an overwhelming majority, would bring relief to 1.55 million of those who have lost their unemployment benefits.

Let us look and see what the Dole bill would do, or the bill advanced by the minority leader on behalf of the administration. It would bring relief to only 250,000 workers—only 250,000 workers—of the 1,740,000 who have exhausted their unemployment benefits.

Mr. SARBANES. Will the Senator yield for a question about that chart?

Mr. SASSER. I am pleased to yield to the Senator from Maryland.

Mr. SARBANES. As I understand it, these are people who lost their jobs, got the basic 26 weeks of unemployment insurance, have now exhausted any benefits to which they are entitled, are still unemployed, and therefore confront the problem of how to support themselves and their families. The Bentsen bill would reach back and say that for these people they would get additional unemployment benefits for certain periods of time, depending on how serious the situation is in their State; and that the Bentsen bill would, in effect, cover close to about 90 percent of the people who have exhausted their benefits, and that the Dole proposal only covers about 250,000.

Mr. SASSER. Fourteen percent, if memory serves me correctly, I say to my colleague.

Mr. SARBANES. This is obviously a fundamental difference between the legislation. The Dole bill is doing very little to help these people who have exhausted their benefits and who are desperate for some assistance in order to make it through this period in which they find themselves.

The unemployment rate today was 6.7 percent. When these people lost their jobs at the end of last year, it was 5.8, 5.9 percent. They are trying to find a job in a job market that is worse than at the time they lost their job.

Mr. SASSER. Mr. President, I say to my friend from Maryland that the situation is further exacerbated by the fact that the proposal advanced by the minority leader would not cover 44 of the 50 States. The proposal that he is advancing would only be effective in 6 of the 50 States in the Union. And that is why you only have 250,000 of the 1,740,000 workers who would be covered.

The Bentsen proposal, that we passed by an overwhelming margin, would cover 90 percent of those workers who have exhausted their unemployment benefits by virtue of this reachback provision. On the other hand, the Dole proposal would cover only 14 percent of these 1,740,000 workers who have lost their unemployment benefits.

Now, one other, I think, very salient difference I wish to point out, Mr. President, under the proposal that is advanced by the minority leader, those veterans or those members of the armed services who have been honorably discharged but who cannot find work would get no benefits whatsoever.

Our colleagues on the other side of the aisle say, oh, well, we apply the same criteria to workers in the civilian work force. They have to have left their work involuntarily.

Well, let us take the case of a young aircraft mechanic who is operating in the Persian Gulf with the Marine Corps, working on helicopters. He or she has spent 10 years in the Marine Corps, and spent the last 6 or 8 months out in the deserts of Saudi Arabia. He or she decides that having given 10 years of service to their country, it is now time to join the civilian work force; come home, stay in one place, and look after their family, which has started to grow in their absence. Perhaps there are one or two small children.

So this helicopter technician says: "I am not going to extend my enlistment. I am not going to reenlist this time. I want to go back home to North Carolina. There, I have been promised a job as an aircraft mechanic, and I am going back to get it."

So he takes his honorable discharge, goes back to North Carolina. He gets to the aircraft maintenance facility, and they say, "Sorry, because of the recession, we cannot give you a job. We cannot hire you." he goes from place to place to place and he cannot find a job.

Under the proposal advanced by our colleagues on the other side of the aisle, this veteran of the war in the Middle East would not be eligible for unemployment benefits as he or she would have been under other unemployment bills that we have passed in other years.

So, you see, it is inadequate in many respects. But I think glaringly inadequate in its treatment of our veterans, particularly those who fought in the Middle East.

Mr. SARBANES. Will the Senator yield?

Mr. SASSER. I will be pleased to yield.

Mr. SARBANES. I very much appreciate the explanation which the Senator just made because the distinguished minority leader earlier today took the floor and took issue with the Senator on this question of how the bills affected the veterans. I listened to him. It was not clear to me.

Let me just read what he says, because the Senator now has pointed out a very important aspect of this problem. What he said about his bill is that they would provide 26 weeks of benefits for those who sought to reenlist or to sign up for further service and were turned down by the service. In his legislation, he would provide 26 weeks. But for those who were honorably discharged, who finished their tour of duty and took an honorable discharge he said his bill would provide "no benefits to those who voluntarily choose to leave the service, such as those taking a new job in the private sector."

But what about the people who finish their term of duty and do not reenlist? They have met their obligation. As the Senator pointed out in his example, you may have someone who has met his obligation, met it yet again, met it yet again—10 years of service—leaves the military. He may have had a job promised which fell through. He may not have had a job promised which fell through. He may not have had a job promised and went back to look for one. This is with an honorable discharge, with a distinguished service record. It may well have included combat in the gulf. Under the Dole proposal that person would not be entitled to unemployment insurance to help see him through this period of a difficult recession while he tries to search out a job in the civilian sector. Is that correct?

Mr. SASSER. The Senator from Maryland is quite correct. That is exactly how the proposal advanced by our friend from Kansas would work, or fail to work, with regard to someone who is honorably discharged from the military service. And the irony is that in other times, in a time of peace, those who have been honorably discharged would have been entitled to unemployment compensation benefits if they were unable to find a job, even if they voluntarily left military service.

Mr. SARBANES. Voluntarily leaving military service here means completing your term of enlistment and getting an honorable discharge. It does not mean ducking out on your responsibility. It means fully meeting your responsibility, receiving an honorable discharge, and then coming back and trying to integrate yourself into the civilian sector.

Under the Dole proposal that person would not get any help in order to accomplish that transition, is that correct?

Mr. SASSER. Mr. President, that is precisely correct, and that is the way the Dole proposal would operate.

Another distinction between a civilian occupation and a military occupation is that those in the enlisted ranks in the military service sign up for a specific term of duty: Three years, five years. In civilian life you are free to simply walk in to the boss and say, "I quit." In the military, you cannot do that. If you signed up for a particular term of enlistment, then you are expected and required to fill out that term of enlistment.

So, if a young man or woman who served honorably during their first term or second term or even third term of service is honorably discharged and does not want, for whatever personal reason, to take on an additional 3- to 5-year obligation, if they are honorably discharged and cannot find work, then under this proposal advanced by Senator DOLE they could get no unemployment benefits.

But under the proposal that this body passed overwhelmingly and sent to the President and which will be on his desk Tuesday, these same veterans would be entitled to 26 weeks of unemployment compensation.

Mr. President, I listened carefully to what the distinguished minority leader had to say about the fact that their bill was self-financing. I do not know that I can add much to what my friend from Maryland had to say about that because I thought he did an excellent job of exposing the holes in this so-called financing scheme.

One is the scheme to collect on defaulted student loans. I think we all agree that we ought to continue to withhold income tax refunds that might be coming to those who have defaulted on student loans. But this is present law, as the Senator from Maryland has pointed out. Our friends on the other side of the aisle would simply extend this law and say that they are paying for their particular bill, even though this will not bring any revenues into the Treasury until 1994.

That being the case, if it brings no revenues in until 1994, under the budget agreement that was advanced by the administration and adopted by this House and signed into law, then all other entitlement programs would be subjected to a sequester to make up for the revenue losses in fiscal year 1993, waiting for the revenues that are supposed to come in 1994 from the extension of the student loan program.

I think the Senator from Maryland did an excellent job of defining the extent to which the student loan collections, or the collections from the income tax returns from defaulted student loans, would be inadequate in defraying costs of this particular item. The Republican bill that the minority leader is advancing simply extends, after 1994, an authority that the Internal Revenue Service already has to collect unpaid loans from a person's tax returns. And it uses an accounting treatment that has already been rejected. The Republican bill takes credit in 1992 for money that will not come into the Treasury until 1994.

I would like to go to the Director of the Office of Management and Budget, Mr. Darman, and say to him: Mr. Budget Director, I want to expand an entitlement program here in 1992 and 1993. Oh, by the way, we will not get any revenue stream to pay for this until the outyears, fiscal years 1993 and 1994, some 2 years later. Will that be all right?

I can tell you very quickly what the answer would be. That if you do that and do not pay for it in the year you make the expenditure, then you can expect a sequester of all of the other entitlement programs. So when they say that their bill, even though inadequate, is paid for, I would say that that is simply a sham and does not stand up to even minor scrutiny.

The other major funding source is the sale of part of the so-called electromagnetic spectrum. The bill advanced by the minority would force part of the eligible spectrum to be sold in 1992. But this would be a quick fire sale if it were sold in 1992, and billions of dollars in value would be lost to the Treasury simply because of the fact that they would not be able to negotiate for the highest price.

Mr. President, much is made by our friend on the other side that, with this bill that we are advancing to offer relief to millions of unemployed across this country, we would do violence to the budget, it would increase the budget deficit.

As my friend from Maryland has already pointed out a number of times, the funds are there, the funds were collected. There is an $18 billion surplus in the unemployment compensation fund. The shame of it is that this balance has gone up $500 million during the course of this recession. The money that was collected from employees and employers to deal with the problem of unemployment, this is being held in a trust fund, not being expended. As a matter of fact, that balance is going up in a recession, something that is unparalleled in the history of the unemployment compensation fund.

Mr. SARBANES. Will the Senator yield?

Mr. SASSER. I will be pleased to yield to the Senator from Maryland.

Mr. SARBANES. Mr. President, I asked the Secretary of Labor about this. Here is this fund to pay unemployment extended benefits, and this fund is building up a surplus right in the middle of a recession. It just defies logic, reason, and common sense.

She thought it was wonderful. She had all this money in the fund. I do not know what she is going to do with it.

You are not going to hatch it. The purpose of collecting it is to pay the benefits. She reminds me of the librarian who, when asked how are things in the library, says, "Wonderful, every book is on the shelf."

The purpose of the library is to get the books off the shelf and out to the people, and the purpose of the trust fund is to pay benefits in times of recession. Business Week this last week ran a cover that says, "I'm Worried About My Job," and then has a lead article talking about the recession and the unemployment: "I'm Worried About My Job," this is a time under the unemployment insurance trust system when these funds are to be used to pay these benefits, and they are not doing it. It is an abuse of the trust fund.

Mr. SASSER. The Senator from Maryland is quite right. The crocodile tears that are shed about the fact that paying these unemployed workers their own money that they paid into the trust fund for a rainy day when they did not have their jobs would do violence to the budget deficit, I think, just does not have a ring of trust to it.

I talked the other day on the floor about the rush last week, just last week, to forgive $1.7 billion in foreign debts owed to the Treasury of the United States by countries all around the world. That is this administration, in a rush to forgive those debts.

The State Department is playing a "Beat the Clock" game against the new credit reform rules that took effect just a few days ago on October 1. But before those new credit reform rules that were part of the budget summit agreement took effect, this administration went all over the world forgiving indebtedness.

Mr. President, a little known element of that rush to judgment last week was the haphazard forgiveness of a $93 million debt owed by Haiti, which threw out its democratically elected President just a few days ago in a military coup, and the administration, in its rush to forgive that indebtedness, did not even wait for the outcome of the coup.

We have heard much about this is not an emergency, with regard to the unemployed millions in this country. Somehow it seems an emergency to rush out and forgive foreign debts all across this world before the October 1 credit reform proposal takes effect, even an emergency to forgive the debt of the Government of Haiti which just deposed its democratically elected President.

So I would say, Mr. President, to my colleagues, that it is time now to act on the Bentsen proposal. This proposal will be on the President's desk Tuesday. All he has to do is pick up his pen and sign his name. After all, that proposal passed the House of Representatives by an overwhelming margin. It passed this body by an overwhelming bipartisan margin. Simply with the stroke of that pen, Mr. President, the President of the United States can give relief to millions of desperate Americans across this country who have lost their jobs, through no fault of their own, who want to work and who are now asking, until I find a job, let me have some of that unemployment compensation that was withheld from my salary. Let me have it back to help me get through this rainy day.

Mr. President, I am hopeful that the President of the United States will rethink this whole process, and when that bill arrives on his desk Tuesday morning that he will pick up that pen and say, yes, I am going to help these people across this country who are unemployed by this recession, people, through no fault of their own, facing an economic disaster. That is the least we can do. That is the least this President ought to do, Mr. President. I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to say to the distinguished Senator from Tennessee that I certainly appreciate his very powerful statement. I want to particularly underscore his very strong and effective leadership in this fight.

I was struck by the Senator's comment about this practice now of forgiving debt. The Senator said that the President had forgiven debt for how many countries?

Mr. SASSER. There are 17 countries that span the globe that the administration has forgiven their indebtedness to the Treasury just in the past few months.

Mr. SARBANES. Just to underscore this point, I want to read from a letter I received from an unemployed person saying:

DEAR SENATOR SARBANES: I am writing this letter to you after watching the hearing on television on the problem of the unemployed people in America.

And America is spelled here in capital letters.

The reason I put that in capital letters is because we would be better off if we were from a foreign country so that President Bush would see it in his heart to help us out. He does nothing for the Americans that are suffering. I only hope you will be able to get through to Bush and make him realize that we are in an emergency situation in our own country.

I have another letter from someone who says:

What constitutes an emergency? Whenever the unemployment rates have been this devastating in the past, the Federal Government has automatically stepped in. What has made this emergency different? Could it be that no one wants to admit that there is an emergency? This extension in unemployment benefits in general are programs for the middle-class working people who have fallen on hard times. They have contributed to this Government. They will pay taxes on this money. This isn't a handout. This isn't a freebie. These people will contribute again. It has been proven. This country is in jeopardy of losing one of its natural resources. The United States was made great by working people. This Government should show dedication and loyalty to these people who have contributed both financially with their income tax dollars and physically with their hard work.

Mr. President, I join with the distinguished Senator from Tennessee in urging the President to address this problem of the unemployed. The emergencies are not only beyond our border; there is an emergency here at home for the unemployed people in our land.

Mr. SASSER. Mr. President, if I could just add one note to the eloquent statement of the Senator from Maryland. I want to recognize the yeoman effort on the part of my distinguished friend from Maryland in bringing this unemployment compensation bill to the floor and first elevating the Senate's consciousness to the dire need of the unemployed all across this country.

Without the efforts of the distinguished Senator from Maryland, I am not sure that this bill would be before us, would have been before us this past week.

But I was struck by really the depth of the emergency facing this country. According to U.S. Government figures, 8.4 million of our fellow countrymen are officially unemployed. That is more than twice the population, Mr. President, of my native State of Tennessee. And you add to that 8.4 million 6.4 million people who are underemployed, people who lost their good-paying jobs or jobs for which they were qualified and were forced into more menial jobs that pay less, simply because their old jobs no longer existed, 6.4 million of them——

Mr. SARBANES. Part-time jobs.

Mr. SASSER. Part-time jobs.

Mr. SARBANES. These are people who want to work full time and they can only get a part-time job; 6.5 million people; 8.5 million people cannot get a job at all and 6.5 million people who want a full-time job can only get a part-time job.

Mr. SASSER. I say to my friend from Maryland there are 1.1 million workers out there who over the months have become so discouraged about not finding a job that they have fallen off the unemployment statistics. They are not counted. So if you add all of those people together, 8.4 million who are officially unemployed, the 1.1 million who have fallen off the official rolls because they have become so discouraged they are not carried on the rolls anymore, and you add to that the 6.4 million who want to work full time but can only find part-time work, then you have 16 million of our fellow citizens across this country who do not have adequate employment.

That is almost 13 percent of the work force in this country, I say to my friend from Maryland—almost 13 percent. If that is not an emergency, I do not know what is.

Our friend, the minority leader, who was here a moment ago tried to ascribe this economic disaster to a luxury tax—to a luxury tax. Was it a luxury tax that caused the Government of Maryland to lay off 1,700 employees just this week? Was it a luxury tax that caused DuPont to lay off 1,095 workers this week? American Express, not touched by a luxury tax, laid off 1,700 employees this week.

This economic malaise is all across this economy. It is no longer limited to one geographic area. It is no longer limited to any one industry. It is no longer industry specific. It is not just the auto industry. It is not just the steel industry. It is all across this economy. And people cannot find jobs. There is anxiety and fear across this country like we have not seen for a good while.

Mr. President, in the face of this, if the President of the United States this coming Tuesday does not sign this bill to give minimum relief to the long-term unemployed, if he does not hear their cries of anguish, then there is going to be a day of reckoning coming, in my judgment.

Mr. SARBANES. Mr. President, I suggested the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with consideration of the nomination.

Mr. DANFORTH. Mr. President, returning to the issue of the nomination of Clarence Thomas to be Associate Justice of the U.S. Supreme Court, one of the remarkable and very gratifying things that has happened over the past 3-plus months is the number of people who have come forward who have known Clarence Thomas for a very long period of time and who have testified to this person's character and his competence. In many ways the battle over the Clarence Thomas nomination is a battle between those who know Clarence Thomas and those who do not know him. It is a battle between lifelong friends on the one hand and interest group lobbyists on the other hand.

Mr. President, those who are opposing Clarence Thomas, many of them, have attempted to make the issue of Roe versus Wade a litmus test of determining whether to vote for a Supreme Court nominee. This I believe is an improper approach to Supreme Court nominations because if we in the Senate attempt to condition our support for a nominee on that nominee's promise to take a specific position on a hypothetical case that might come before the Court, then we are infringing on the independence of the judiciary.

The American people deserve judges and Supreme Court Justices who will determine the law and who will not seek to impose their personal social or political philosophies on the American people.

For 5 days, Clarence Thomas was interrogated in the Judiciary Committee about his position on Roe versus Wade. He was asked the question not once, or twice, or one dozen, or two dozen, or three dozen times.

About halfway through the proceedings, Senator HATCH announced that he had made a count and that as of that time Clarence Thomas had been asked 70 different times to state a position on Roe versus Wade. It seems to me that after the question is asked once or twice, members of a committee might get on with it. But he was asked repeatedly the same question.

At one point in one of the scores and scores of answers that he gave to the question of Roe versus Wade, he stated that he did not have a personal opinion and that he had never even discussed it with anybody. And immediately, of course, his detractors seized on that one answer and said, oh, this cannot be true; this does not ring true; everybody has had to have had discussions on Roe versus Wade.

I think it is a picky point, but, Mr. President, there are those who like picky points, and therefore I have attempted to deal with it.

I do not know how to prove a negative. I do know that the interest groups that are opposing the Clarence Thomas nomination have now taken out newspaper ads asking people to come forward if they have ever discussed Roe versus Wade with Clarence Thomas. I suppose that if nobody comes forward, that will not be adequate proof for his detractors. But I have received a number of letters from people who have known Clarence Thomas very well over a long period of time.

I would like to share some of those letters with Members of the Senate.

The first letter is written by Lovida H. Coleman, Jr. She is an attorney. She is the daughter of the former Secretary of Transportation, William Coleman. She has written a letter to Senator LEAHY and sent me a copy. Here is the letter:

DEAR SENATOR LEAHY: I went to law school with Clarence Thomas and he and I have been good friends since that time. I was in particularly close touch with Clarence when he first came to Washington, DC. I know Clarence well enough to be absolutely certain of his intellectual capabilities, his dedication to public service and his integrity.

I was very pleased for Clarence when he was nominated by President Bush to be a Supreme Court Justice. I have followed the confirmation process carefully and I listened closely to your questions to Clarence. It was quite evident that you gave little credence to Clarence's assertion that he had not discussed Roe v. Wade when it was decided while we were in law school. I am writing to share with you my perspective on this matter which may assist you in making a more informed judgment about Judge Thomas.

I frequently ate breakfast with Clarence in law school as we were among the very few who liked to get an early start when the dining hall first opened at 7 a.m. I vividly recall that the dominate feature of these means was the good natured laughter and wide-open discussion which this self-selected small group of sunrisers shared. Clarence was among the best raconteurs and was frequently a leader in our daybreak meetings.

I do not recall that Roe v. Wade was ever a matter that Clarence discussed in these sessions or elsewhere. There was several reasons why it is not as likely as you assumed that Roe v. Wade raised issues that were of critical interest at that time. First, abortion was legal in twenty states in 1973. Access to a legal abortion was not a problem for my contemporaries. Therefore the decision was not nearly as important then as the prospect that it may be overruled is today.

Second, with very few exceptions, current legal cases tended to be of much less concern to us as law students than the tax, real estate and constitutional law cases we were studying in class. Even in constitutional law courses, we were much more likely to be reading and discussing turn of the century cases on the interstate commerce clause than current Supreme Court cases. The one exception that I recall was our discussions about the Bakke case, which concerned an affirmative action program in law school admissions, that was much more relevant to us that Roe v. Wade.

Third, our discussions of current events at that time were almost entirely dominated by one overwhelming issue—Watergate. Indeed, I have spoken to a reporter who normally covered the Supreme Court at that time who said that he did not cover the Roe v. Wade decision because he was at the trial of Dr. Ellsberg. Watergate was of far greater interest to us in 1973 than Roe v. Wade.

Thus Clarence's testimony that he does not recall discussing Roe v. Wade while in law school is entirely consistent with my own recollection and personal experience. Nor do I recall any such discussions after law school. I can assure you that it is highly unlikely that Clarence Thomas would ever dissemble about such an important issue.

The chairman of the American Bar Association committee that reviewed Clarence's qualifications testified that the two most significant qualifications for being a great justice on the Supreme Court are character and integrity. Clarence Thomas has character of tremendous depth and his integrity is unquestionable. No one who knows Clarence has disagreed with this assessment.

Finally, in evaluating Clarence Thomas's qualifications for the Supreme Court, one should keep in mind what Justice Blackman wrote in Roe v. Wade: "Our task, of course, is to resolve the [abortion] issue by constitutional measurement, free of emotion and of predilection." 410 U.S. 113, 116. Regardless of

his personal views on abortion, of which I am not informed, I am confident that Clarence Thomas would address the abortion issue and any other legal issue with constitutional dispassion.

Very truly yours,

LOVIDA H. COLEMAN, Jr.

Then, Mr. President, I have a letter from my former administrative assistant, Alexander V. Netchvolodoff, my life-long friend who served as my administrative assistant, both when I was attorney general, until last March in my Senate office, and during the entire time that Clarence Thomas worked with me, both in Jefferson City and in Washington. Alexander Netchvolodoff was my administrative assistant and he knew Clarence Thomas very well. He has written me the following letter:

DEAR JACK: I have known Clarence Thomas for more than 15 years. I have had thousands of separate conversations with Clarence over that period of time. We have discussed everything from the 18th Century English novel to running a marathon.

One subject that specifically never came up in our discussions was the subject of abortion. I know that some people find that assertion improbable. I find nothing improbable about it at all. The fact is I have thousands of friends and acquaintances with whom I have never discussed the subject of abortion, and Clarence Thomas happens to be one of them.

Then I have a letter from Allen Moore who was my legislative director during the entire time that Clarence Thomas served as a legislative assistant here in Washington.

Allen Moore writes in part—this is just a partial quotation from his letter:

It is also distressing that some of your colleagues, and others, talk in disbelief about the fact that Clarence Thomas doesn't recall ever talking about *Roe* v. *Wade*. Why is that so preposterous? I don't recall ever talking about abortion with him, nor do I remember talking about nuclear war, the Soviet Union, capital punishment, prayer in schools, etc. Yet, I understand that a newspaper advertisement now seeks to identify anyone who ever discussed abortion with him.

In my experience, Clarence's focus has always been on his job, his family, his friends, and his search for ways to help blacks get ahead in a hostile world. It doesn't seem strange to me that abortion rights would have been low on his personal list of priority issues. I would guess that the same thing would be true for many blacks whose primary focus is economic issues.

You and your colleagues have long since been forced to state your views on abortion—over and over again with every conceivable nuance. Most Americans are spared that burden. Therefore, how can it be fair to attack a person's integrity or intelligence simply because he doesn't recall expressing a view on the matter?

Finally, I have a letter from Mark Mittleman, a lawyer in St. Louis, who shared an office in Jefferson City when Clarence Thomas was an assistant attorney general. I will not read from the letter, but it is to the same effect that he never had such a discussion with him.

Mr. President, I ask unanimous consent that these letters be printed in the RECORD.

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

DILWORTH, PAXSON,
KALISH & KAUFFMAN,
Washington, DC, October 3, 1991.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: I went to law school with Clarence Thomas and he and I have been good friends since that time. I was in particularly close touch with Clarence when he first came to Washington, D.C. I know Clarence well enough to be absolutely certain of his intellectual capabilities, his dedication to public service and his integrity.

I was very pleased for Clarence when he was nominated by President Bush to be a Supreme Court Justice. I have followed the confirmation process carefully and I listened closely to your questions to Clarence. It was quite evident that you gave little credence to Clarence's assertion that he had not discussed *Roe* v. *Wade* when it was decided while we were in law school. I am writing to share with you my perspective on this matter which may assist you in making a more informed judgment about Judge Thomas.

I frequently ate breakfast with Clarence in law school as we were among the very few who liked to get an early start when the dininghall first opened at 7 a.m. I vividly recall that the dominant feature of these meals was the good natured laughter and wide open discussion which this self-selected small group of sunrisers shared. Clarence was among the best raconteurs and was frequently a leader in our daybreak meetings.

I do not recall that *Roe* v. *Wade* was ever a matter that Clarence discussed in these sessions or elsewhere. There were several reasons why it is not as likely as you assumed that *Roe* v. *Wade* raised issues that were of critical interest at that time. First, abortion was legal in twenty states in 1973. Access to a legal abortion was not a problem for my contemporaries. Therefore the decision was not nearly as important then as the prospect that it may be overruled is today.

Second, with very few exceptions, current legal cases tended to be of much less concern to us as law students than the tax, real estate and constitutional law cases we were studying in class. Even in constitutional law courses, we were much more likely to be reading and discussing turn of the century cases on the interstate commerce clause than current Supreme Court cases. The one exception that I recall was our discussions about the *Bakke* case, which concerned an affirmative action program in law school admissions, that was much more relevant to us than *Roe* v. *Wade*.

Third, our discussions of current events at that time were almost entirely dominated by one overwhelming issue—Watergate. Indeed, I have spoken to a reporter who normally covered the Supreme Court at that time who said that he did not cover the *Roe* v. *Wade* decision because he was at the trial of Dr. Ellsberg. Watergate was of far greater interest to us in 1973 than *Roe* v. *Wade*.

Thus Clarence's testimony that he does not recall discussing *Roe* v. *Wade* while in law school is entirely consistent with my own recollection and personal experience. Nor do I recall any such discussions after law school. I can assure you that it is highly unlikely that Clarence Thomas would ever dissemble about such an important issue.

The chairman of the American Bar Association committee that reviewed Clarence's qualifications testified that the two most significant qualifications for being a great justice on the Supreme Court are character and integrity. Clarence Thomas has character of tremendous depth and his integrity is unquestionable. No one who knows Clarence has disagreed with this assessment.

Finally, in evaluating Clarence Thomas' qualifications for the Supreme Court, one should keep in mind what Justice Blackmun wrote in *Roe* v. *Wade*: "Our task, of course, is to resolve the [abortion] issue by constitutional measurement, free of emotion and of predilection." 410 U.S. 113, 116. Regardless of his personal views on abortion, of which I am not informed, I am confident that Clarence Thomas would address the abortion issue and any other legal issue with constitutional dispassion.

Very truly yours,

LOVIDA H. COLEMAN, Jr.

OCTOBER 1, 1991.

Hon. JOHN C. DANFORTH,
U.S. Senate, Washington, DC.

DEAR JACK: I have known Clarence Thomas for more than 15 years. I have had thousands of separate conversations with Clarence over that period of time. We have discussed everything from the 18th Century English novel to running a marathon.

One subject that specifically never came up in our discussions was the subject of abortion. I know that some people find that assertion improbable. I find nothing improbable about it at all. The fact is I have thousands of friends and acquaintances with whom I have never discussed the subject of abortion, and Clarence Thomas happens to be one of them.

Sincerely,

ALEXANDER V. NETCHVOLODOFF.

NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION,
Washington, DC, October 3, 1991.

Senator JOHN C. DANFORTH,
United States Senate, Washington, DC.

DEAR JACK: I have been troubled since Clarence's nomination by the fact that people who do not know him, and who have not listened to him, have decided to attack his integrity. Now that we are in the final stages of the confirmation, it is getting ugly.

Whether the charge is "confirmation conversion," or a "lack of being forthright," these are just other ways of calling someone a liar. You and I both know that Clarence would make a lousy liar. Can you imagine trying to get him to do or say something he does not believe in?

Clarence is now accused of rejecting some of his more controversial statements after he put them in context during his hearings. The most extreme interpretations of these statements had been relied upon to discredit him. I find it offensive that his detractors now simply reject his explanation so as to be able to add "liar" to their other charges against him.

It is also distressing that some of your colleagues, and others, talk in disbelief about the fact that Clarence doesn't recall ever talking about *Roe* v. *Wade*. Why is that so preposterous? I don't recall ever talking about abortion with him, nor do I remember talking about nuclear war, the Soviet Union, capital punishment, prayer in schools, etc. Yet, I understand that a newspaper advertisement now seeks to identify anyone who ever discussed abortion with him.

In my experience, Clarence's focus has always been on his job, his family, his friends,

and his search for ways to help blacks get ahead in a hostile world. It doesn't seem strange to me that abortion rights would have been low on his personal list of priority issues. I would guess that the same thing would be true for many blacks whose primary focus is economic issues.

You and your colleagues have long since been forced to state your views on abortion—over and over again with every conceivable nuance. Most Americans are spared that burden. Therefore, how can it be fair to attack a person's integrity or intelligence simply because he doesn't recall expressing a view on the matter?

Clarence's prospects look good, but the process has gone sour. He and his family do not deserve the personal attack. None of this helps the Court either. I hope you will take the accusers on directly and aggressively. They should put up or shut up.

Good luck,

ALLEN MOORE,
President.

BEACH, BURCKE, MOONEY
AND LAKE, P.C.,
St Louis, MO, October 1, 1991.

Senator JOHN C. DANFORTH,
Russell Building,
Washington, DC.

DEAR JACK: I understand a controversy has arisen in the Senate with regard to Judge Clarence Thomas's statement, in his Supreme Court confirmation hearing testimony, that he had not previously discussed the issue of abortion or the decision in Roe v. Wade.

As you know, Clarence and I, along with John Ashcroft, shared an office from 1974 to 1976 when we were Assistant Attorneys General during your administration as Attorney General of Missouri. We had adjacent desks, worked on many of the same cases for the Department of Revenue, and socialized outside the office. During those years, there was a considerable amount of litigation in the Office of the Attorney General on post-Roe abortion issues. Mike Boicourt, who was one of Clarence's and my closest friends, was actively involved in that litigation, as was Brook Bartlett, the First Assistant. You personally took a lead role in the cases. I am sure you recall that within the Office I had questioned the aggressive anti-Roe posture you were taking on some of those issues, while John Ashcroft had enthusiastically supported your position.

Thus, the subject of abortion certainly came up from time to time in casual conversations I, John, Mike, Brook and others held in Clarence's presence. Yet I can affirm that his Judiciary Committee testimony was true: he did not participate in those discussions. I must have been sufficiently struck by his silence at the time that I remember it today even though there was of course no reason then to believe it would have any later importance. But, if anything, I simply considered his detachment in the face of an issue which so agitated others as one more of the many remarkable and memorable examples of his unconventional thinking. His statement to the Committee therefore is not only credible, but consistent with his unique intellect and personality, which I consider an advantage rather than a demerit as he seeks confirmation by the full Senate to our highest Court.

I will be happy to confirm these observations personally to any Senator who may still have questions on the subject.

Sincerely,

MARK D. MITTLEMAN.

Mr. DANFORTH. Mr. President, I do not know how to prove a negative, Mr. President. I can say to the Senate for 3 months and 1 week I have been attempting to keep up with the various charges that have been made against Clarence Thomas of one thing or another.

The one lesson that I have gotten out of it is that if the President of the United States calls you up and asks you to let yourself be nominated for a position of high public trust, and if you have any kind of track record at all, you better watch out, because the process is going to be grueling, because Members of the Senate and their staffs, and interest groups, and countless lawyers, working for interest groups, and people who take out advertisements in newspapers, are going to be combing through everything you have ever said, everything that you have ever written, in an effort to find something to criticize.

If they do not get the answer the first time on Roe versus Wade, ask it a second time. If not then, ask it a 10th time, a 50th time, a 100th time. Push the same question. Maybe somehow you will get a variation of the answer that you could use in your latest attack or in your latest newspaper ad. You better watch out if you are going to be nominated by the President of the United States.

The gratifying thing is that the people who have been attacking Clarence Thomas have been the interest groups, the inside-the-beltway lobbyists, paid to scurry through the corridors of the Senate, spreading this word here and that word there, hiring their lawyers, looking through the speeches and the law review articles, combing through the footnotes, looking for any suggestion that they can make that there is something wrong here. And against those lobbyists are people who have known Clarence Thomas personally—Lovida Coleman, Alexander Netchvolodoff, Allen Moore, Mark Mittleman, all kinds of people who have come here from Georgia, who have come here from the EEOC, who worked with Clarence Thomas, all kinds of people, simple people who have known Clarence Thomas, and who believe in him, and who believe in his character, and who want to stand up for him.

It was very interesting during the hearing when Clarence Thomas was a witness and all the interest groups were there spin controlling the press, working the media, getting their message out in the most organized way. There, at the same time, was a State senator, Roy Allen, a black Democrat from Georgia, who grew up with Clarence Thomas, and who served as an altar boy with him. There was a nun who was his eighth-grade teacher. And there were all kinds of people from the EEOC who had worked with him, people of various races, people with crippling physical disabilities, who had worked with Clarence Thomas at the EEOC, and who believed in him.

For 3 months and 1 week, the liberal interest groups have ginned up their professionally born messages, and the people who have known Clarence Thomas for years and years, who have taught him in school, who have worked side by side with him, people with a variety of political persuasions, have come forward and they have said: We want you to know about the real Clarence Thomas. We want you to know about the real life human being whom we know, whom we went to school with and we have worked side by side with. We want you to know about the person who, when he opened the doors of the new office building of the EEOC, insisted that it be the most accessible building in the Federal Government to the physically impaired. We want you to know the person who understands what it is like to be poor, and what it is like to be black, and what it is like to struggle, and what it is like to be the little guy. We want you to know the person who does not spend the time talking about the lobbyists, whose heart is with the average citizen, not the powerful, but the average citizen. We want you to know the Clarence Thomas we know.

To see one of the workers in the Senate Commerce Committee, a man who does errands for the committee, stand there at the door of the hearing room to see how his friend Clarence is doing, that is what is really inspirational about this long 3-plus-month ordeal.

The war, of course, is never over until the last shot is fired. I have no doubt that shots are going to be fired in the next 4 days or so. No doubt at all. There are all kinds of interests whose livelihoods depend on attacking the likes of Clarence Thomas. But I know we are going to win it. I know the votes are there now to win it. And I know the American people are going to win. They are going to find on the Supreme Court of the United States a real, live, flesh-and-blood human being, who has been there with them in the worst of times, in the worst of circumstances, who has suffered with the most disadvantaged people in this country, and whose heart is with them. They are going to win, because he is going to serve on the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

The ACTING PRESIDENT pro tempore (Mr. FORD) announced that on today, October 4, 1991, he had signed the following enrolled bill and joint resolutions previously signed by the Speaker of the House:

S. 868. An act to amend title 10, United States Code, and title 38, United States Code, to improve the educational assistance benefits for members of the reserve components of the Armed Forces who served on active duty during the Persian Gulf War, to improve and clarify the eligibility of certain veterans for employment and training assistance, and for other purposes;

S.J. Res. 132. Joint resolution to designate the week of October 13, 1991, through October 19, 1991, as "National Radon Action Week"; and

H.J. Res. 305. Joint resolution to designate the month of October 1991, as Country Music Month."

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that he had presented to the President of the United States the following enrolled bill and joint resolutions:

On October 3, 1991:

S.J. Res. 78. Joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

On October 4, 1991:

S. 868. An act to amend title 10, United States Code, and title 38, United States Code, to improve the educational assistance benefits for members of the reserve components of the Armed Forces who served on active duty during the Persian Gulf War, to improve and clarify the eligibility of certain veterans for employment and training assistance, and for other purposes; and

S.J. Res. 132. Joint resolution to designate the week of October 13, 1991, through October 19, 1991, as "National Radon Action Week."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2002. A communication from the President of the United States, transmitting, pursuant to law, notice of the exercise of statutory authority in order to declare a national emergency with respect to Haiti; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1350. A bill to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes (Rept. No. 102–174).

By Mr. FORD, from the Committee on Rules and Administration, with an amendment:

S. 289. A bill to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes (Rept. No. 102–175).

By Mr. FORD, from the Committee on Rules and Administration, without, amendment:

S. Res. 192. An original resolution to amend the Standing Rules of the Senate to conform with recent changes in the law made by the Legislative Branch Appropriations Act, 1992, and other Acts and to make certain technical correction.

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. ROCKEFELLER (for himself, Mr. DURENBERGER, Mr. MCCAIN, Mr. BREAUX, Mr. GRASSLEY, Mr. MITCHELL, AND Mr. LEVIN):

S. 1810. A bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare Program, and for other purposes; to the Committee on Finance.

By Mr. CRANSTON:

S. 1811. A bill to authorize the additional use of land in the city of Pittsburg, CA; to the Committee on Energy and Natural Resources.

By Mr. WIRTH:

S. 1812, A bill to provide for the protection of the water resources of the San Luis Valley, Colorado, from the potential impact of proposed water development projects for export of water out of the San Luis Valley upon Federal interests in Federal reclamation projects, interstate compacts for the allocation of water, national monuments, and national wildlife refuges, wildlife refuges, wildlife habitat area withdrawals, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. STEVENS, Mr. KASTEN, Mr. GARN, Mr. SEYMOUR, Mr. HATCH, Mr. CRAIG, Mr. THURMOND, Mr. COCHRAN, Mr. DURENBERGER, Mr. COATS, Mr. GRASSLEY, Mr. CHAFEE, Mr. SPECTER, Mr. JEFFORDS, Mr. D'AMATO, Mr. PACKWOOD, Mr. BURNS, Mr. PRESSLER, Mr. DOLE, Mrs. KASSEBAUM, Mr. BOND, Mr. HATFIELD, Mr. DOMENICI, Mr. BROWN, Mr. WARNER, Mr. COHEN, Mr. SYMMS, Mr. DASCHLE, Mr. AKAKA, Mr. GRAHAM, Mr. SHELBY, Mr. WOFFORD, Mr. GORE, Mr. SASSER, Mr. DECONCINI, Mr. NUNN, Mr. PRYOR, Mr. SANFORD, Mr. LEVIN, Mr. REID, Mr. GLENN, Mr. JOHNSTON, Mr. LIEBERMAN, Mr. LAUTENBERG, Mr. BREAUX, Mr. SIMON, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DIXON, and Mr. CONRAD):

S.J. Res. 212. Joint resolution to designate October 19 through 27, 1991, as "National Red Ribbon Week for a Drug-Free America"; 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. FORD:

S. Res. 192. An original resolution to amend the Standing Rules of the Senate to conform with recent changes in the law made by the Legislative Branch Appropriations Act, 1992, and other acts and to make certain technical correction; from the Committee on Rules and Administration; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROCKEFELLER (for himself, Mr. DURENBERGER, Mr. MCCAIN, Mr. BREAUX, Mr. GRASSLEY, Mr. MITCHELL, Mr. RIEGLE, and Mr. LEVIN):

S. 1810. A bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare Program, and for other purposes.

MEDICARE PHYSICIAN PAYMENT REFORM IMPLEMENTATION ACT OF 1991

Mr. ROCKEFELLER. Mr. President, I am extremely honored to rise today, with my good friend from the State of Minnesota, Senator DURENBERGER, as we introduce a bill, the Physicians Payment Reform Limitation Act of 1991 and that we so do with Senator MCCAIN and Senator BREAUX. It is a very difficult and complex bill, Mr. President. But it is also a very important one.

Senator DURENBERGER and I have joined together once again to clarify how we, the two of us, who are the original Senate sponsors of physician payment reform in terms of legislation, intended that legislation to be implemented.

Two years ago Congress worked very hard and very long with the adminis-

tration, with physicians' organizations, with beneficiary groups, to enact what is fundamentally landmark legislation to reform the Medicare reimbursement policies for physicians. The system was in dire need of being made more fair and a lot more workable. Payments did not make sense. Neither doctors nor beneficiaries understood the bill existed. Costs were and are spinning out of control.

Mr. President, we are now practically on the eve of implementation of physician payment reform—a subject known to few, but a subject of great importance—and some very serious problems remain unresolved, problems which could seriously jeopardize its acceptance by the medical community and that are important and could possibly adversely affect Medicare beneficiaries and their access to health care.

I am the first to acknowledge that the implementation of the physician payment reform is technical and complex and, in fact, monumental except for those that it would affect.

I am dismayed that the proposed rules issued by the Health Care Financing Administration last June really do not accurately or adequately reflect the congressional intent that Senator DURENBERGER and I are quite firm about. Our objective was to do some careful surgery to eliminate inequities in physician reimbursement so that payments in fact reflect the actual cost of providing medical care.

Under HCFA's proposed rules, almost $7 billion will be cut from physician payment over a 5-year period due to an adjustment to account for more undervalued services moving immediately to the new fee schedule plan than overvalue procedures in the year 1992. This is referred to as the asymmetric transition.

I am very pleased that Dr. Wilensky, the excellent HCFA Administrator, indicated at a hearing that I held and the day Senator DURENBERGER held in our Medicare Subcommittee earlier this year, that in fact HCFA is taking a second look at their initial interpretation of how the asymmetric transition is to be done. Our bill provides an assurance that in making the adjustment for the asymmetric transition the conversion factor would not be premanently reduced.

Mr. President, our bill strikes a compromise on an assumption made by HCFA regarding possible changes in the volume and in the intensity of services provided by the physicians in response to reductions in their Medicare fees which could flow from this bill.

While I am and have deeply concerned about the effect any miscalculations in my estimates could have on the Federal Treasury, I am not ready to assume the worst, as evidently HCFA feels that it must do.

The RB–RVS fee schedule was never meant to be a mechanism to hold down Medicare physician payment expenditures. The Medicare volume performance standard was the total approved by Congress to address any changes in the volume and the intensity of the physician services that might occur. The volume performance standard provides a new way to stabilize Medicare costs through a rationally informed congressional process. It will work.

The Physician Payment Review Commission, in their recommendations, issued in response to HCFA's proposed rules questioned the appropriateness of assuming that physicians who lose income will offset half of their losses with increased volume, while at the same time they assume that those physicians who will see increases in their incomes would not change their volume or intensity. In other words, their behavior.

The PPRC concluded that physicians were being unfairly penalized before they had a chance to even show how they would behave. And Senator DURENBERGER and I agreed with that. Under our proposal, HCFA is limited to assuming the changes in the volume and intensity in the services in response to the new fee schedule with increased overall physician spending by no more than 1 percent. We feel that is fair.

This adjustment is to be applied across the board, meaning to both the conversion factor and the historical payment base.

I did not promise this was interesting. I only said it was important.

If changes in physician behavior, in fact, turn out to exceed this expectation, Congress is not limited in any way in adjusting physician updates in future years to take this into account. That also makes sense.

I can assure you, Mr. President, that I intend to be very vigilant in monitoring any changes in the volume or in the intensity of services related simply to the implementation of the RB–RVS fee schedule and reductions in fees for certain other services.

Our bill would also restore Medicare payments for EKG interpretations, which were eliminated last year in the Omnibus reconciliation Act of 1990 in order to achieve budget deficit savings.

The position of Senator DURENBERGER and myself is budget neutral because we require HCFA to adjust the relative values and the fee schedule for physician visits to reflect separate EKG payments.

Another provision which was included in last year's reconciliation bill further reduced Medicare payments to new physicians, and physicians who are not in medical school are very, very worried about this. Our proposal would not totally eliminate this disparity, but we do attempt to soften it somewhat.

In closing, our bill also prohibits HCFA from issuing final regulations that would change current payment methodologies for anesthesia services and drugs furnished incident to a physician's visit.

Our bill requires additional information and analysis to be provided to Congress to support alternative methodologies for reimbursement.

Finally, our bill establishes pilot projects to ease the feasibility and desirability of alternative methods of establishing Medicare volume performance standards. For example, we would test whether separate volume performance standards could be established for States, for specialties, for hospital medical staffs, or other groups of physicians.

Physician payment reform is not just about doctors' salaries, Mr. President. Physician payment reform is a critical measure of Congress, of the administration, and the health care providers; that is, all of us working together. Are we going to be able to do that successfully?

Two years ago when we all sat down at the table to hammer out this landmark legislation, we came to that table with different ideas, with very different experiences, and sometimes extremely divergent viewpoints, but ultimately we reach an agreement, and Senator DURENBERGER and I are determined and committed to make sure that agreement is carried out as we intended.

I am determined to prove that interested parties can come together and reform our health care system.

Mr. President, I ask that a summary of the bill and the text of the bill be inserted in the RECORD following my remarks.

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

S. 1810

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 "Medicare Physician Payment Reform Implementation Act of 1991".

SEC. 2. ADJUSTMENT FOR ASYMMETRY OF THE TRANSITION.

(a) TREATMENT OF ADJUSTMENT FOR TRANSITION IN 1993–1996.—Section 1848(d)(1) of the Social Security Act (42 U.S.C. 1395w–4(d)(1)) is amended, by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following:

"(C) PHASED ELIMINATION OF TRANSITION REDUCTION.—In determining the conversion factor for each of the years after 1992 and before 1997, the Secretary shall increase the conversion factor otherwise determined under subparagraph (A) for that year by one-fourth of the percentage (if any) by which the conversion factor determined under subparagraph (B) for 1992 was decreased by reason of the asymmetry of the transition provided under subsection (a)(2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to services furnished on or after January 1, 1992.

SEC. 3. LIMIT ON REDUCTION FOR CHANGES IN VOLUME AND INTENSITY.

(a) IN GENERAL.—

(1) CONVERSION FACTOR.—Section 1848(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w-4(d)(1)(B)) is amended by adding at the end the following: "In determining the conversion factor under this subparagraph, the Secretary may not assume that changes in volume and intensity in response to the implementation of this section for physicians' services under this part would increase the estimated aggregate amount of payments under this part for all physicians' services by more than 1 percent.".

(2) AHPB.—Section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D)) is amended by adding at the end the following new clause:

"(iv) ADJUSTMENT FOR CHANGES IN VOLUME AND INTENSITY.—If the conversion factor for 1992 is reduced pursuant to the second sentence of subsection (d)(1)(B), the Secretary shall reduce the adjusted historical payment basis otherwise determined for a service under clause (i), (ii), or (iii) by the same percentage as the conversion factor is reduced pursuant to such sentence.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to services furnished on or after January 1, 1992.

SEC. 4. PERMITTING SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS PROVIDED DURING OFFICE VISITS.

(a) IN GENERAL.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by striking paragraph (3).

(b) DEVELOPMENT OF SEPARATE FEE SCHEDULE AMOUNTS FOR ELECTROCARDIOGRAM INTERPRETATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall establish separate fee schedule amounts under section 1848(b) of the Social Security Act for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or consultation with a physician.

(2) ADJUSTMENT OF FEE SCHEDULES FOR OFFICE VISITS.—With respect to physicians' services consisting of visits to or consultations with a physician, the Secretary shall adjust the relative values established for such services under section 1848(b) of the Social Security Act to reflect the establishment of separate fee schedule amounts under paragraph (1).

(c) DEVELOPMENT OF PRACTICE GUIDELINES.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services (acting through the Administrator of the Agency for Health Care Policy and Research) shall—

(1) establish practice guidelines for electrocardiograms for the use of physicians, and shall disseminate the guidelines and other educational information relating to the use of electrocardiograms to physicians; and

(2) develop a profile for the use of electrocardiograms by physicians.

(d) STUDY OF UTILIZATION AND COSTS OF ELECTROCARDIOGRAMS.—

(1) STUDY.—The Secretary of Health and Human Services (acting through the Administrator of the Agency for Health Care Policy and Research) shall conduct a study of the utilization and costs of electrocardiograms, and shall include in the study an analysis of the effects of the amendment made by subsection (a) and the provisions of subsection (b) on such utilization and costs.

(2) REPORT TO CONGRESS.—Not later than 2 years after the effective date of the final regulations promulgated by the Secretary of Health and Human Services to carry out the amendment made by subsection (a) and the provisions of subsection (b), the Secretary shall submit a report on the study conducted under paragraph (1) to Congress.

(e) EFFECTIVE DATE.—The amendment made by subsection (a) and the provisions of subsection (b) shall apply to services furnished on or after January 1, 1992.

SEC. 5. PRECLUSION OF RETROACTIVE APPLICATION OF NEW PHYSICIAN PAYMENT PROVISIONS TO CERTAIN PHYSICIANS.

In the case of a physician—

(1) who was in the first, second, or third year of practice (as such terms are defined in section 1842(b)(4)(F)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(4)(F)(ii)) during 1991,

(2) who was a member of a group practice during such calendar year, and

(3) to whose services the provisions of section 1842(b)(4) of such Act did not apply during such calendar year because the physician was a member of a group practice,

the provisions of section 1848(a)(4) of the Social Security Act (42 U.S.C. 1395w-4(a)(4)) shall not apply to services furnished by such physician (or incident to such services) on or after January 1, 1992.

SEC. 6. MORATORIUM AND STUDY ON IMPLEMENTATION OF PROPOSED RULE TO ELIMINATE USE OF ACTUAL TIME UNITS FOR ANESTHESIA SERVICES.

(a) PROHIBITION ON ISSUANCE OF FINAL RULE.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue, in final form, after September 30, 1991, and before July 1, 1993, any regulation that changes the methodology in effect on September 30, 1991, for determining the amount of time that may be billed for anesthesia services under section 1848 (or section 1833(l)) of the Social Security Act. Any provision of a regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(b) STUDY.—(1) The Director of the Office of Technology Assessment shall, subject to the approval of the Technology Assessment Board, conduct a study of the feasibility and desirability of—

(A) basing payments for anesthesia services under title XVIII of the Social Security Act on average time rather than actual time,

(B) basing payments for such services on actual time for the intraoperative portion of a procedure and average time for the pre- and post-operative portions of the procedure, and

(C) computing a different average time for each surgical or other procedure with respect to which anesthesia services are furnished and using a different code for each such procedure.

(2) The Director shall report the results of the study specified in paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives not later than March 1, 1993.

SEC. 7. MORATORIUM AND STUDY ON IMPLEMENTATION OF PROPOSED RULE TO CHANGE PAYMENT FOR DRUGS FURNISHED INCIDENT TO A PHYSICIAN'S SERVICE.

(a) PROHIBITION ON ISSUANCE OF FINAL REGULATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue, in final form, after September 30, 1991, and before July 1, 1993, any regulation that changes the methodology in effect on September 30, 1991, for determining the amount paid for drugs and biologicals that are furnished incident to physicians' services. Any provision of a regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(b) STUDY ON PROPOSED RULE TO CHANGE PAYMENT FOR DRUGS FURNISHED INCIDENT TO A PHYSICIAN'S SERVICE.—The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall conduct a study and report to Congress by no later than 1 year after the date of enactment of this Act, on the feasibility and desirability of changing the methodology utilized to determine payment amounts under title XVIII of the Social Security Act for drugs and biologicals that are furnished incident to physicians' services. Such report shall include information on the extent to which physicians are able to obtain discounts or rebates with respect to the purchase of such drugs and biologicals, and recommendations on other cost control measures which may be implemented with respect to payment of such drugs.

SEC. 8. STUDY ON PAYMENT FOR MULTIPLE SURGICAL PROCEDURES.

(a) STUDY.—(1) The Secretary of Health and Human Services shall conduct a study of the relative values of surgical procedures that—

(A) are performed by the same physician on the same patient within 24 hours,

(B) are not incidental to the primary surgical procedure performed on the patient, and

(C) require separate incisions.

(2) Such study shall compare the work, practice expense, and malpractice relative values for such procedures with the values for such procedures when performed alone.

(b) REPORT.—The Secretary shall submit a report on the study required by subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives not later than 1 year after the date of the enactment of this Act.

SEC. 9. PILOT PROJECTS ON DEVELOPMENT OF MEDICARE PERFORMANCE STANDARDS OTHER THAN AT THE NATIONAL LEVEL.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for pilot projects, by no later than October 1, 1993, to test a variety of alternative methods for establishing medicare volume performance standards such as separate performance standard rates of increase for services furnished by (or within) States, specialties, hospital medical staffs, or groups of physicians. Notwithstanding any other provision of law in carrying out such pilot projects, the Secretary of Health and Human Services is authorized to provide physicians or physician groups such data as is necessary to establish and monitor medicare volume performance standards.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to carry out the pilot projects provided for in this section $4,000,000 in fiscal year 1992, to remain available without regard to fiscal year limitations.

(c) EFFECTIVE DATE.—The Secretary shall solicit pilot projects by no later than 90 days after the date of enactment of this Act.

PHYSICIAN PAYMENT REFORM IMPLEMENTATION ACT OF 1991

ADJUSTMENT FOR ASYMMETRY OF THE TRANSITION

Current Law: In 1992, physician services whose fees are within 15 percent of the 1992

fee schedule will be paid on the fee schedule. Approximately one-third of all physician services will be paid on the fee schedule in 1992. The remaining two-thirds of physician services will gradually move to the fee schedule over 5 years. It is estimated total payments for undervalued services will increase more than payments for overvalued services will decrease in 1992.

Proposal: The conversion factor shall be increased in 1993, 1994, 1995, and 1996 by one-fourth of the percentage by which the conversion factor may have been decreased due to an adjustment for asymmetry in 1992.

LIMIT ON REDUCTION FOR CHANGES IN INTENSITY AND VOLUME OF SERVICES

Current Law: None.

Proposal: The Secretary of HHS may not assume that changes in the volume and intensity of services in response to the implementation of the new payment system would increase aggregate physician expenditures by more than 1 percent. Any reduction that HCFA may apply, due to assumed volume and intensity changes, shall be applied equally to the conversion factor and the adjusted historical payment base.

PAYMENTS FOR INTERPRETATION OF EKGS

Current Law: OBRA 1990 eliminated separated payments to physicians for interpreting EKGs, effective January 1, 1992.

Proposal: The Secretary of HHS shall establish separate fee schedule amounts for the interpretation of EKGs and adjust the relative values in the fee schedule for physician visits to reflect separate payments for EKG interpretation. The Secretary of HHS shall establish EKG practice guidelines, disseminate these guidelines to physicians, and develop physician EKG profiling. The Secretary of HHS shall study EKG utilization and costs and report to Congress.

TREATMENT OF NEW PHYSICIANS

Current Law: Physicians in their first year of practice are reimbursed at 80% of what would otherwise have been paid, 85 percent in their second year, 90% in their third year, and 95% in their fourth year. The provision does not apply to primary care services or services furnished in a rural health professional shortage area.

Proposal: New physician provisions would not apply to services furnished on or after January 1, 1992 by a physician who was in his or her first, second, or third year of practice in 1991 and to whom the rules did not apply in that year.

ANESTHESIA SERVICES

Current Law: Payments for anesthesia services are made on the basis of a Uniform Relative Value Guide. Payments are calculated based on actual time.

Proposal: The Secretary of HHS is prohibited from issuing final regulations changing the methodology for determining the amount of time that may be billed for anesthesia services prior to July 1, 1993. The Office of Technology Assessment shall conduct a study of the feasibility and desirability of basing payments for anesthesia services on average time versus actual time; basing payments for services on actual time for the intraoperative portion of a procedure and average time for pre- and post-operative portions of the procedure; and computing a different average time for each surgical or other procedure for which anesthesia services are furnished and using a different code for each procedure.

DRUGS AND BIOLOGICALS FURNISHED INCIDENT TO PHYSICIANS SERVICES

Current Law: Drugs provided incident to physicians' services are generally reimbursed based on average wholesale prices or actual acquisition costs.

Proposal: The Secretary of HHS is prohibited from issuing final regulations changing the methodology for determining the amount paid for drugs and biologicals furnished incident to physicians' services prior to July 1, 1993. The Secretary of HHS shall study and report to Congress the feasibility and desirability of changing the methodology used to determine payment rates, including information on the extent to which physicians are able to obtain discounts or rebates on drugs and biologicals.

PAYMENT FOR MULTIPLE SURGICAL PROCEDURES

Current Law: Carriers adjust payments for multiple surgical procedures not incidental to the primary surgery in varying amounts. Generally, an additional payment of 50 percent of the next highest procedure and additional payments of 20 percent to 50 percent for other procedures are made. Some carriers reimburse for no more than 3 surgical procedures, others have no limits. Multiple surgeries done by different surgeons are paid at full levels.

Proposal: The Secretary of HHS shall conduct a study of the relative values of surgical procedures that are performed by the same physician on the same patient within 24 hours; are not incidental to the primary surgical procedures; and require separate incisions. The study shall also compare the work, practice expense, and malpractice relative values for multiple surgical procedures with the values for similar procedures when performed alone.

MEDICARE VOLUME PERFORMANCE STANDARD

Current Law: Annual updates to the conversion factor are linked to Volume Performance Standards. Each year Congress sets a performance standard for the rate of growth in spending for physician services. After comparing actual growth to the VPS, Congress determines the conversion factor update. If Congress does not act, HCFA applies a default formula set by Congress.

Proposal: The Secretary is to establish demonstration projects to test the feasibility of establishing Volume Performance Standards by or within states, specialties, hospital medical staffs, or groups of physicians.

Mr. DURENBERGER. Mr. President, my colleague from West Virginia, Senator ROCKEFELLER, who really is solely responsible for the fact that we have physician payment reform before us, has spoken eloquently to the very, very important issue with which we have been involved. Together, we helped design the original physician payment reform bill in 1989. But it is he who saw to its passage, both on the Senate side, and particularly in conference.

Today, we join to introduce the Physician Payment Reform Implementation Act. I am not pleased, any more than he, with the need to do so.

The bill is intended to change several provisions contained in the notice of proposed rulemaking issued by the Health Care Financing Administration on June 5. Before proceeding to the specifics, however, let me say for the RECORD that not all of the provisions of this bill of ours are designed to reverse decisions made by HCFA. Some of the provisions are to change or eliminate faulty Medicare physician payment policies adopted in haste by the Congress in conference in a search for budgetary savings.

Mr. President, as one of the two Senate authors of the payment reform, I feel a deep responsibility to ensure that the program is implemented in the manner intended by both the Congress and the physician community that must make it work.

More pragmatically, as someone who helped design the medicare hospital prospective payment system 8 years ago, and who continues to live through the annual litany of modifications to that system, I know how important it is to get things right at the beginning.

Let me assure my colleagues, our failure to act now to rectify the major flaws in the proposed physician fee schedule will lead to endless debate and problems down the road, which will require congressional intervention.

Mr. President, the 1989 physician payment reform was designed to make sense out of the way in which physicians are reimbursed for their services by Medicare. The current method of physician payment, called customary, prevailing and reasonable, customary, prevailing and reasonable is inequitable and inflationary. It pays different doctors different amounts for the same service. It rewards doctors for doing more, rather than less, and it allows wide variation in payments to physicians practicing in different parts of the country.

Mr. President, it was for all those reasons, and more, that my colleague from West Virginia and I worked so hard to pass the physician payment reform legislation. We wanted to create a fair payment system. But fair is not the perception that the doctors have about the new fee schedule.

To visualize the new method of physician payment, think of a simple mathematical equation that we all learned as kids: A times B equals C. C equals the amount in real money that a physician is paid by Medicare.

The first part of the equation, A, is the number that we have assigned to a particular procedure, so we can judge its value in relationship to all other procedures. An appendectomy might have a 50. A measles short, in relationship to that, might have a 10. This part of the equation—the 50 for the appendectomy, and the 10 for the measles—always stays the same.

The next part of the equation is B. B represents the number that turns A into C, and that is called the conversion factor.

That is an oversimplification of what, in reality, is a very complex system, which requires much deeper treatment. But the essence is captured in the equation: A times B equals C; The procedure value times the conversion factor, which changes every year, equals the amount paid to your doctor for a particular procedure.

The problem is that in figuring out B, the conversion factor, HCFA made some decisions which resulted in a figure that is too low. That is why we are hearing from our doctors.

It is a little more complicated to explain why the conversion factor is low, but I will try. Under the rules of transition from the old system to the new system—we decided we had to do this over 5 years, rather than putting it into place now—we raise fees for so-called undervalued procedures, where the physicians are paid too little, faster than we lower the fees for so-called overvalued procedures. This results in a first-year shortfall, known as the asymmetrical transition problem. But we are supposed to have budget neutrality.

So, Mr. President, HCFA chose to get the shortfall back by reducing the conversion factor. This meant that the procedures that will be paid at the full fee schedule amount in 1992 will be forced to absorb the budget shock. Since just one-third of all procedures will move to the fee schedule in 1992, the result is a tripling effect, meaning the conversion factor is reduced three times more than it would be if the short fall were spread equally across all payments.

To her credit, Dr. Wilensky announced that HCFA will correct the asymmetrical transition problem and eliminate that tripling effect. Without these changes, it would have cost the physicians of this country $6.9 billion over 5 years in unintended budgetary savings, and they would have been able to say: "Hey, you are trying to make money off of this for the budget."

The exact details of the methodology that HCFA will employ to make the correction are not known, but the Senator from West Virginia and I have confidence that the problem will be addressed in the final regulation.

Our confidence is reflected by the fact that our bill does not dictate a particular methodology for resolving the asymmetrical transition problem. It does, however, stipulate that any reduction made in the conversion factor to address the first-year shortfall must be restored in equal increments over the remainder of the transition. This provision will assure that no unintended savings are generated in 1993 through 1996 by the requirement for budget neutrality in 1992. Nobody can say we are trying to make money for the deficit on the backs of the doctors.

Our next problem is more difficult to resolve. The HCFA actuaries have assumed that there will be a substantial increase in the number and intensity of services provided in response to reductions in physicians' Medicare income. On the other hand, for those physicians whose aggregate Medicare fees will rise under the new schedule, HCFA assumes no reduction in volume or intensity. The result of HCFA's economic assumptions is a large reduction in the 1992 conversion factor.

Mr. President, the Physician Payment Review Commission believes the economic assumptions by HCFA represent a worst-case scenario. The Commission, which is responsible for advising us on matters relating to physician payment, recommends that any adjustment to the 1992 fee schedule be limited to no more than 1 percent of total fees.

Mr. President, the fact is that nobody really knows what changes will occur in response to the new fee schedule. When we designed the system in 1989, the Senator from West Virginia and I knew there would be all kinds of changes in response to new fees. What was not predictable was the specific nature of the changes or their magnitude, particularly at the individual physician level.

Common sense dictates that if a large percentage of income is from Medicare, physicians who experience big cuts in their income will face strong incentives to act in a manner that will help offset those reductions. And, Mr. President, there are many metropolitan areas in this country with large numbers of Medicare patients which will experience significant reductions in aggregate physician fees under the new fee schedule. That is what these charts back here tell you.

By the end of the 5-year transition, the physicians who receive Medicare in Miami will see a 30.7-percent reduction in the aggregate amount of their fees, in San Diego, 28.3; Fort Lauderdale-West Palm Beach, 27.1; Houston, 25.2; in Baltimore, 22. I am looking for Honolulu on here and I am not sure that I am finding it. Oh, my gosh, here is Honolulu, 24.7 percent.

What I want you to do is look at Minneapolis-St. Paul, which my colleague, who is on the floor and I represent. Our physicians will see their income reduced by only 1.1 percent on Medicare. What does that mean? It means people in Minnesota are getting terrific deals from their doctors and that doctors in Minnesota are underpaid. But not in Miami. So what are the doctors in Miami going to do? That is the issue. What will they do?

Well, we do not know exactly what they will do. And it is for that reason that balance billing limits have been put on, so that doctors cannot transfer their extras fees or extra charges on to their patients.

One of the things that could occur, I believe, is that in the Miami, Santa Barbara, San Diego, and maybe even Honolulu areas, there could be more procedures, more visits, more ancillary services, and so forth. But I also believe in the Minneapolis-St. Paul, Denver, Corvallis, and Detroit areas, where the physician payments are going to rise, doctors may not be doing all the procedures they did before. So we do not know exactly where that is going to come out.

Mr. President, one of our goals was to provide physicians with an incentive to practice as efficiently as possible. That is why we included the Medicare volume performance standard as a key component of the legislation, and tied that standard directly to future updates in physician fees.

Unfortuntely, due to data constraints and other factors, the MVPS makes future adjustments for changes that occurred 2 years in the past. Hence it is a somewhat clumsy and indirect mechanism for assuring that total physician fees do not exceed desired levels.

Mr. President, if the MVPS could be made more responsive to the types of economic changes anticipated, the bill Senator ROCKEFELLER and I are introducing would have precluded HCFA from making any assumptions up front about future changes in volume and intensity. However, to change the MVPS mechanism at this point would delay the implementation of the new fee schedule by at least 1 year. So instead, our bill states that HCFA may not assume that volume and intensity changes will increase aggregate physician payments by more than 1 percent during 1992. In addition, to assure equity in the system, any reduction that HCFA makes due to assumed changes in volume and intensity must be applied equally to all fees, not just those which will be paid at the dollars over the next 5 years. We are primarily concerned with the financial ramifications of this legislation in the first 2 years of implementation. After that time, the volume performance standard kicks in as a mechanism for responding to changes in volume and intensity.

Nonetheless, in the short term, we must find a way to pay for this legislation, preferably from within the Medicare Program itself. I will not declare physician payment reform a budget emergency, thus enabling us to waive the rules of the Budget Act. The doctors will benefit from our bill. The patients already benefit from payment reform. So whatever funds are needed to implement it should come from within the Medicare Program.

In closing, Mr. President, I think it is important that we remember our primary goal when we passed the physician payment reform legislation: To do a better job meeting the access and quality needs of our senior citizens. Well, Mr. President, without this legislation, physician payment reform may end up being a medical procedure that made the patient sicker, not better.

Mr. President, I ask unanimous consent that copies of these tables be printed in the RECORD at the end of my statement.

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

Estimates of effect of fully-phased-in Medicare physician fee schedule

MSA name	*Percent*[1]
Miami	−30.7

MSA name	Percent[1]
Santa Barbara	−29.3
San Diego	−28.3
Oxnard-Ventura	−28.2
Los Angeles	−27.9
Ft. Lauderdale/W. Palm Beach	−27.1
Riverside/San Bernardino	−26.2
San Antonio	−25.8
Houston	−25.2
Anahiem/Santa Ana	−24.9
Honolulu	−24.7
Bakersfield	−23.8
Daytona	−23.1
Tampa	−22.6
New York	−22.5
Orlando	−22.1
Baltimore	−22.0
Sacramento	−19.4
Kansas City	−17.9
Louisville	−17.5
Nassau/Suffolk	−17.4
Boston and Worcester	−17.2
Chicago	−17.1
Las Vegas	−16.6
Tulsa	−16.5
Oakland	−16.0
Oklahoma City	−15.5
San Jose	−15.3
San Francisco	−14.8
Rochester	−14.0
Buffalo	−13.3
Washington, DC	−13.3
Vancouver	−11.6
Portland	−11.0
Salem	−10.7
Seattle	−10.3
Detroit	−8.0
Corvallis	−6.9
Denver	−2.6
Minneapolis/St. Paul	−1.1
United States	−16.8

[1] Percent change in physicians payment.

Mr. MITCHELL. Mr. President, I rise today to add my support to Senators ROCKEFELLER and DURENBURGER for the Physician Payment Reform Implementation Act of 1991. I want to commend the chairman and ranking member of the Finance Subcommittee on Medicare and Long-Term Care for their efforts to assure that the implementation of Medicare physician payment reform is in keeping with the intent of Congress.

Mr. President, included in the Omnibus Reconciliation Act of 1989 was a major reform of the way physicians are paid under the Medicare Program. This reform proposal, which was authored by Senator ROCKEFELLER and DURENBURGER, was a difficult and lengthy undertaking, intended to make payments to physicians more equitable and less dependent on specialty and geographic location.

The goals of physician payment reform are particularly important in rural States like Maine, West Virginia, and Minnesota. Our States rely on the services of primary care physicians to provide necessary medical care to persons living in isolated communities. One of the most critical factors in providing quality health care in Maine is the distribution of physicians.

Recruitment and retention of primary care physicians is very difficult in my state, in large part because of the low reimbursement for doctors providing primary care. Physician payment reform was intended to increase payment for primary care and to reduce the disparity in payment between urban and rural physicians.

Unfortunately, the administration's proposed regulations jeopardize this important goal. The administration's attempt to reduce the overall Medicare payment to physicians in the aggregate would result in lower increases for primary care doctors than was anticipated in the original legislation.

If we are to continue to work toward providing access to health care for all Americans, regardless of their income level, age, or geographic location, we must assure that physicians are compensated fairly for their services. Otherwise we will continue to have a surplus of doctors in wealthy suburbs and a shortage of doctors in poor and isolated communities.

Congress and the administration must keep their commitment to the physicians who worked with us to develop the Medicare physician payment system. We must also keep our commitment to the Nation's Medicare beneficiaries who depend upon physicians to provide quality care for both primary services and specialty services, in both rural and urban America.

I urge my colleagues to join with us in supporting this important legislation.

Mr. RIEGLE. Mr. President, today I join my colleagues, Senators ROCKEFELLER and DURENBERGER, in cosponsoring the Physician Payment Reform Implementation Act of 1991. This act clarifies Congressional intent regarding physician payment reform under Medicare. As with many of my colleagues, I am concerned about the Health Care Financing Administration's [HCFA] June 5 proposed regulations to implement physician payment reform. The proposed regulations will result in billion dollars of reductions in total payments to physicians through the new Medicare physician fee schedule. I have raised my concerns about the proposed regulations in several letters to HCFA and meetings my staff has had with them.

When Congress supported physician payment reform in the Omnibus Budget Reconciliation Act of 1989 [OBRA '89], we did so because we intended that the system provide more incentives for primary care and reduce payments for certain procedures. We wanted the system to be fair and predictable for patients and doctors. The new system was to be budget neutral, with no program savings associated with the transition to the fee schedule.

The physician community supported this change because it recognized that the present system was unpredictable and often inequitable and work in good faith on Medicare physician payment reform. The proposed aggregate payment reductions undermine the cooperation that was extended at that time.

Mr. President, this bill addresses two key areas of concerns; the asymmetry of the transition to the new payment system and assumed changes in intensity and volume of services made by HCFA in the regulations. More than anything, this bill symbolizes Congress' intent in these two major areas. Based on information from HCFA, we know that the administration is correcting the problem of asymmetry in the final regulation and I am very pleased that they are doing this. This bill acknowledges those efforts and ensures that this is done in a budget neutral manner. It is my hope that the administration considers other provisions in this bill as they develop the final regulations.

The bill also has a series of provisions to improve implementation of the Medicare's physician payment system in particular areas. Clearly, the bill does not address every aspect of implementation of physician payment reform, and we will be working in the Finance Committee to ensure appropriate implementation of Medicare's physician payment reform. S. 1810 has the support of the American Medical Association and the Michigan State Medical Society and I will continue to work with these organizations to implement this important act.

Mr. President, I commend Senators ROCKEFELLER and DURENBERGER, the two Senator authors, for their continued leadership in this area.

By Mr. CRANSTON:

S. 1811. A bill to authorize the additional use of land in the city of Pittsburg, CA; to the Committee on Energy and Natural Resources.

ADDITIONAL USE OF LANDS IN PITTSBURG, CA

• Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to authorize the additional use of land in Pittsburg, CA. The bill is a companion to H.R. 2816 sponsored in the House by Congressman GEORGE MILLER and recently approved by the House Interior Committee as an amendment to H.R. 2556.

In 1960 the city of Pittsburg, CA, purchased 300 acres of land from the Federal Government for park and recreation purposes. The deed required the city to use the property exclusively for those purposes for 20 years. Subsequently the deed was amended to require park and recreation use in perpetuity. The city now wishes to use 1 acre of this land for a new fire station to serve a rapidly growing part of the community. The proposed site at the northwest end of the 300 acres has been identified as the best location for a fire station to cover the many fires that occur on the grassy parklands during dry seasons and to provide fire protection for local residences.

This legislation removes the deed restriction from a portion of the property so that up to 1.5 acres can be used for a fire station or other public purposes.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1811

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVAL OF RESTRICTION.—Notwithstanding the restrictions otherwise applicable under the terms of the conveyance by the United States of any of the lands described in section 2 to the city of Pittsburg, California, or under any agreement concerning any part of such lands between such city and the Secretary of the Interior or any other officer or agent of the United States, the lands described in section 2 may be used, for the purposes specified in section 3.

SEC. 2. LANDS AFFECTED.—The lands referred to in section 1 are only portion not exceeding 1.5 acres of the lands described in that certain Quitclaim Deed of the United States to the city of Pittsburg, California, bearing the date of March 25, 1960, and recorded in Record of Deeds of the County of Contra Costa, California, as document No. 79015, in Book 3759 at page 1 of Records.

SEC. 3. AUTHORIZED USES.—The city of Pittsburg, California, may use the lands described in section 2 for a fire station or other public purpose, or may transfer such lands to another governmental entity on condition that such entity retain and use such lands for such purpose.●

By Mr. WIRTH:

S. 1812. A bill to provide for the protection of the water resources of the San Luis Valley, CO, from the potential impact of proposed water development projects for export of water out of the San Luis Valley upon Federal interests in Federal reclamation projects, interstate compacts for the allocation of water, national monuments, and national wildlife refuges, wildlife habitat area withdrawals, and for other purposes; to the Committee on Energy and Natural Resources.

SAN LUIS VALLEY WATER RESOURCES PROTECTION ACT

Mr. WIRTH. Mr. President, I rise today to introduce legislation to protect the water resources of the San Luis Valley in Colorado from being injured by a private development project that could literally leave farmers, and their communities, high and dry.

Every westerner knows that water truly is our life blood, and that is nowhere more true than in the San Luis Valley. Hispanic and Anglo families have been farming in the arid San Luis Valley for more than 100 years. Originally, they relied on water diverted from the Rio Grande River, which flows through the valley. But they have also come to rely upon water from an enormous confined aquifer that lies deep below the surface throughout the valley. But these farmers' water use is limited by forces beyond their control.

An interstate compact, for sharing the waters of the Rio Grande River, requires Colorado to deliver significant quantities of water to downstream States—so significant, in fact, that from 1952 to 1968, Colorado underdelivered its compact share by a total of 900,000 acre-feet. Colorado ultimately was able to meet its commitments, but the Rio Grande compact requirements has been a constant threat to farmers in the San Luis Valley who could never be sure if they would have water for the growing season.

Fortunately, Mr. President, the Congress offered the people of the San Luis Valley a helping hand. The Bureau of Reclamation has invested $82 million to develop the closed basin project, and will spend another $20 million to complete it. This project will pump just enough water from a shallow, unconfined aquifer in the San Luis Valley to meet Colorado's compact requirements without affecting wetlands and surface water flows throughout the valley. That arrangement protects the farmers' water rights, their livelihoods, and the valley's environment.

The confined and unconfined aquifers of the San Luis Valley also sustain enormous wetlands throughout the valley. The Monte Vista National Wildlife Refuge, the Alamosa Wildlife Refuge, the Blanca Wildlife Area managed by the Bureau of Land Management, several State wildlife areas, and countless unprotected wetlands rely on a precarious water balance in the valley. And untold thousands of migratory birds rely on these wetlands for their very existence.

Endangered whooping cranes migrate through the valley as part of much larger populations of sandhill cranes. Other birds, ranging from avocets, curlews, egrets, ducks of every description, Canada geese, and others pass through the valley on their seasonal migrations. As I said, these migratory birds, and other wildlife, rely for their very existence on the wetlands of the San Luis valley.

Finally, Mr. President, the Great Sand Dunes National Monument, established by Presidential decree in 1932, is also found in the San Luis Valley. The enormous sand dunes of this monument have been an object of scientific interest for decades. We are just beginning to understand the dynamics of this natural wonder. But there is increasing evidence that the shallow ground water and streams that arise in the neighboring Sangre de Cristo mountains, flow into the monument, and then literally disappear, are inextricably tied to the maintenance and stability of the sand dunes.

Mr. President, the legislation I am introducing today is designed to confront a threat facing the farmers of the San Luis Valley, the Federal closed basin project, and the valley's wildlife refuges and national monument. A private development firm has proposed to pump as much as 200,000 acre-feet from the ground water of the San Luis Valley—for export to Denver and perhaps elsewhere. The residents of the San Luis Valley fear that this project would lower the water table in the entire northern portion of the San Luis Valley, deplete flows in surface streams including the Conejos and Rio Grande Rivers, and would totally dewater other streams.

Is this project feasible, Mr. President? The answer is that it might be, at least from an engineering standpoint. But the wildlife refuges, the national monument, the closed basin project, the Rio Grande compact, the thousands of individual farmers would all be the losers.

I do not believe that the Federal Government's interest in these Federal projects and federally sanctioned agreements—or in the welfare of the people of the valley—should be sacrificed. To the contrary, I believe the Congress should tell these developers that Federal agencies will not issue permits, a right-of-way, or licenses, or in any way assist this project unless its proponents can convince the Secretary of the Interior that these impacts will not, in fact, occur. I don't believe they can prove that, Mr. President. I am willing to give them their day in court. But unless they can convince the Secretary, this project should not go forward.

Mr. President, I urge my colleagues to join me in supporting this legislation—and the people of the San Luis Valley.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. STEVENS, Mr. KASTEN, Mr. GARN, Mr. SEYMOUR, Mr. HATCH, Mr. CRAIG, Mr. THURMOND, Mr. COCHRAN, Mr. DURENBERGER, Mr. COATS, Mr. GRASSLEY, Mr. CHAFEE, Mr. SPECTER, Mr. JEFFORDS, Mr. D'AMATO, Mr. PACKWOOD, Mr. BURNS, Mr. PRESSLER, Mr. DOLE, Mrs. KASSEBAUM, Mr. BOND, Mr. HATFIELD, Mr. DOMENICI, Mr. BROWN, Mr. WARNER, Mr. COHEN, Mr. SYMMS, Mr. DASCHLE, Mr. AKAKA, Mr. GRAHAM, Mr. SHELBY, Mr. WOFFORD, Mr. GORE, Mr. SASSER, Mr. DECONCINI, Mr. NUNN, Mr. PRYOR, Mr. SANFORD, Mr. LEVIN, Mr. REID, Mr. GLENN, Mr. JOHNSTON, Mr. LIEBERMAN, Mr. LAUTENBERG, Mr. BREAUX, Mr. SIMON, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DIXON, and Mr. CONRAD):

S.J. Res. 212. A joint resolution to designate October 19 through 27, 1991, as "National Red Ribbon Week for a Drug-Free America"; to the Committee on the Judiciary.

NATIONAL RED RIBBON WEEK FOR A DRUG-FREE AMERICA

Mr. MURKOWSKI. Mr. President, I am pleased to introduce a Senate Joint Resolution designating the week of Oc-

tober 19 as "National Red Ribbon Week for a Drug-Free America."

As most of us are painfully aware, drug and alcohol abuse is the No. 1 concern of Americans today—and rightly so. People across the country are frightened to see their communities eroding and their children suffering from drug and alcohol abuse. Community leaders and dedicated individuals are fighting back and initiating programs that combat drug and alcohol abuse in their communities.

National Red Ribbon Week is one such program. In fact, it is one of the best programs I know that involves people from the grassroots level and up. During the week of October 19, communities across America will be proudly displaying red ribbons to show their intolerance to drug and alcohol abuse.

Almost every State has an active Red Ribbon Week agenda. In Alaska, local Girl Scouts are going door-to-door to deliver red ribbons, businesses are decorating their storefronts with red ribbons, student associations are holding meetings and support sessions, rallys are being held across the State, and many other activities.

Together with the active participation of the honorary national chairmen, President and Mrs. Bush, the National Federation of Parents for Drug-Free Youth, Congressional Families for Drug Free Youth and in Alaska, Alaskans for Drug-Free Youth, and countless others, National Red Ribbon Week has become an institution and something that communities look forward to. It is a comprehensive public awareness and prevention education program involving thousands of parents and community groups from across the country.

I am pleased to sponsor this important resolution and commend the action of the National Federation of Parents for Drug-Free Youth, Alaskans for Drug-Free Youth and the many others who continue to promote a drug-free way of life.

ADDITIONAL COSPONSORS

S. 167

At the request of Mr. CHAFEE, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 167, a bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds.

S. 239

At the request of Mr. SARBANES, the names of the Senator from Nevada [Mr. REID], the Senator from Illinois [Mr. DIXON], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 239, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 359

At the request of Mr. BOREN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 359, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 533

At the request of Mr. GLENN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 533, a bill to establish the Department of the Environment, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes.

S. 567

At the request of Mr. SANFORD, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 567, a bill to amend title II of the Social Security Act to provide for a gradual period of transition (under a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927—and related beneficiaries—and to provide for increases in such workers' benefits accordingly, and for other purposes.

S. 775

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 775, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 891

At the request of Mr. MACK, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from California [Mr. CRANSTON], and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 891, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 1111

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 1111, a bill to protect the Public from Health Risks from Radiation Exposure from Low-Level Radioactive Waste, and for other purposes.

S. 1257

At the request of Mr. BOREN, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Arkansas [Mr. PRYOR], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1553

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 1553, a bill to establish a program of marriage and family counseling for certain veterans of the Persian Gulf War and the spouses and families of such veterans.

S. 1614

At the request of Mr. GRAHAM, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1614, a bill to amend the Rehabilitation Act of 1973 to revise and extend the program regarding independent living services for older blind individuals, and for other purposes.

S. 1617

At the request of Mr. SYMMS, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Utah [Mr. GARN], the Senator from Florida [Mr. MACK], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1617, a bill to amend the Internal Revenue Code of 1986 to provide protection for taxpayers, and for other purposes.

S. 1648

At the request of Mr. MCCAIN, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1648, a bill to amend title VII of the Public Health Service Act to reauthorize and expand provisions relating to area health education centers, in order to establish a Federal-State partnership, and for other purposes.

S. 1673

At the request of Mr. HEFLIN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1673, a bill to improve the Federal justices and judges survivors' annuities program, and for other purposes.

S. 1723

At the request of Mr. REID, the names of the Senator from Montana [Mr. BURNS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 1723, a bill to amend the Older Americans Act of 1965 to establish music therapy services for older individuals, to establish music therapy demonstration projects, and for other purposes.

SENATE JOINT RESOLUTION 18

At the request of Mr. SIMON, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of Senate Joint Resolution 18, a joint resolution proposing an amendment to the constitution relating to a Federal balanced budget.

SENATE JOINT RESOLUTION 96

At the request of Mr. RIEGLE, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of Senate Joint Resolution 96, a joint resolution to designate November 19, 1991, as "National Philanthropy Day."

SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Alabama [Mr. SHELBY], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992, as "National Women in Agriculture Day."

SENATE JOINT RESOLUTION 184

At the request of Mr. DOLE, the names of the Senator from Georgia [Mr. FOWLER] and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 184, a joint resolution designating the month of November 1991, as "National Accessible Housing Month."

SENATE JOINT RESOLUTION 190

At the request of Mr. MOYNIHAN, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Joint Resolution 190, a joint resolution to designate January 1, 1992, as "National Ellis Island Day."

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the names of the Senator from California [Mr. SEYMOUR] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 62

At the request of Mr. SEYMOUR, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Illinois [Mr. DIXON], the Senator from Delaware [Mr. ROTH], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Colorado [Mr. BROWN], the Senator from Wyoming [Mr. WALLOP], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of Senate Concurrent Resolution 62, a concurrent resolution expressing the sense of the Congress that the President should award the Presidential Medal of Freedom to Martha Raye.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. WIRTH. Mr. President, I would like to announce for my colleagues and the public that the oversight hearing scheduled before the Energy Regulation Conservation Subcommittee of the Committee on Energy and Natural Resources for October 17, 1991, has been postponed. The hearing will be rescheduled at a later date.

The purpose of the hearing was to receive testimony on implementation of the Department of Energy's joint venture program for renewable energy.

For further information, please contact Leslie Black of the subcommittee staff at (202) 244–9607.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. SARBANES. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Friday, October 4, 1991, at 9 a.m., to hold a hearing on Legal Pollution of the Great Lakes.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SARBANES. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Friday, October 4, 1991, at 9:30 a.m., to hold confirmation hearings on Robert M. Gates to be Director of Central Intelligence.

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

COMMITTEE ON THE JUDICIARY

Mr. SARBANES. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Friday, October 4, 1991, to hold a markup by the Subcommittee on Patents. S. 793 Patent and Trademark Office authorization bill will be marked up.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SARBANES. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, October 4, at 10 a.m., to hold a hearing on a Peace Corps nomination.

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

ADDITIONAL STATEMENTS

HAITI COUP

• Mr. HARKIN. Mr. President, I rise today to speak about democracy and hope for a people who have known only dictatorship and poverty. I rise to speak about a people who have struggled to break the chains of bondage and cast off the yoke of oppression. I rise to speak of a new day for our hemisphere and the dawning of a new era in north-south relations. And I rise, with all my power, with all the power and prestige that comes with the office of U.S. Senator, to issue a warning to militaries throughout the continent and anyone who dares to trample on the aspirations of a people whose only desire is to live in freedom.

Mr. President, a new doctrine governing our relations with the countries of this hemisphere is emerging in this post-cold war era. A doctrine which proclaims that the decades of dictators is over for the Americas. Never again should the heavy boot of military repression march over people and be unopposed by the countries of this hemisphere. Support for military dictatorships is a thing of the past. The ideals of democracy and support for demilitarization are the future of the Americas. There is a new manifest destiny for the United States, not one of conquest but of cooperation. A destiny which binds the future of our people with those of our neighbors to the south. Where the fate of one is bound to the fate of all. A destiny built on the principle of respect for human rights and equality. It is a destiny that offers a promising and prosperous future.

Mr. President, the military coup which ousted President Aristide on Monday will not stand. The Haitian military should wake up. In Haiti, as in the Soviet Union recently, rightwing conservative forces are making a last desperate attempt to halt the advance of democracy and progress. And as in the Soviet Union, the will of the people, not these rightwing elements, shall prevail.

In the past, the United States has used its power to overthrow certain democratically elected governments in this hemisphere, now we must join with the governments of this hemisphere to restore one. And we will.

I join with other colleagues who have called for international sanctions. All loans from international financial institutions should be halted. And, the United Nations should be encouraged by our Government to become actively involved in resolving this issue peacefully.

But now, more than ever before, there needs to be a coordinated hemispheric response in defense of democracy. The legitimate government of President Aristide must be restored. The United States together with the countries of the Caribbean and Latin America must speak in one clear voice. Let that voice ring out. Let it be heard in the streets and slums of Port-au-Prince. Let it be heard in the market places and huts scattered throughout Haiti's country side. Let it be heard by Haitians who fled their shores in leaky boats and by sugarcane workers who returned to their land after virtual enslavement in the Dominican Republic. Let it be heard and echo throughout the national palace where the coup leaders now sit. And, let that one voice utter one powerful word: Liberty, lib-

erty, liberty. And let that voice be just as loud as it was over the denial of freedom in Kuwait.

Mr. President, Haiti has had a troubled history over the centuries. In the 17th century it was a rich colony. Today it is a poor nation. Throughout its history, Haiti has been subjected to corrupt military and civilian dictatorships. The years of exploitation by both foreign and domestic occupying forces, have taken their toll on the Haitian people. Still, despite all the hunger and suffering inflicted upon these brave people, they remained defiant of death and hopeful in life.

They dreamt of liberty at night, and whispered it in fear during the day. But where people in dim lit huts spoke quietly of democracy, freedom, and land reform, Father Jean-Bertrand Aristide preached it loudly from the pulpit. He is the champion of Haiti's poor. When people were beaten, unjustly arrested, or murdered by "Baby Doc's" dreaded Ton-tons Macoute, Father Aristide spoke out against these abuses. He has stood by his people and his people have stood by him. Time and again we have seen this to be true.

The military and security forces attempted to kill him at least three times, to silence the voice of the voiceless. Who could ever forget that fateful September day in 1988 when his church was burned down and parishioners killed by these forces. But the story of Haiti is not only one of death, it is also one of resurrection. That triumphant day in December 1990 when 70 percent of the voters swept Father Aristide into office in the first free and fair election in that nation's history attests to that fact. And just as hope arose from the ashes of a burned church in 1988, so too will hope and the people of Haiti rise from the ashes of this coup.

Mr. President, I welcome the administration's decision to suspend military and economic aid to Haiti but President Bush's initial silence on the coup was deafening. While President Aristide was being attacked and Haiti's democracy crushed, President Bush was at Disneyland.

Mr. President, after the legitimate government of President Aristide has been restored, and it will be restored, we must begin to ask, why are we always running to catch up? Just 1 year ago, the administration was caught off guard when Saddam invaded Kuwait. The administration was caught off guard when the Kurds revolted, caught off guard by the massacre of Tiananmen Square, caught off guard by the Soviet coup and was the 37th government to recognize the independence of the Baltics. And now, once again we see the administration reacting to events and not ahead of the curve. We should have a policy to avert crises, not just manage them.●

CONGRATULATIONS TO FAIRMONT PRIVATE SCHOOLS

● Mr. SEYMOUR. Mr. President, I rise in salute to Fairmont Private Schools of Orange County, CA. The Fairmont Private Schools is among the 1991 winners of the Department of Education's Blue Ribbon School of Excellence Awards for 1991.

Fairmont Private Schools, a 900-student college-preparatory preschool, elementary, and junior high school, is located on 3 campuses in Anaheim and Yorba Linda. Since 1953, the Fairmont Private Schools has been providing exemplary education to southern California children.

Fairmont Private Schools is the only nonsectarian private school in southern California to receive the blue ribbon award and one of only two schools in Orange County to receive the award, the highest educational honor given in the United States.

Students at Fairmont Private Schools receive an education that stresses the fundamentals, critical thinking skills, and sound study habits that enable them to pursue and enjoy a well-rounded and superior education. Each classroom provides accelerated learning in the three R's, computers, art, music, and sports.

In addition, Fairmont Private Schools provides important educational services to the community at large through its summer camp, extended day care, community service, and educational programs.

I ask my colleagues to join me in recognizing Fairmont Private Schools for its years of service and our congratulations on earning the blue ribbon award.●

ARRIVAL OF CENTRAL ARIZONA PROJECT WATER TO TUCSON

● Mr. DECONCINI. Mr. President, today in Tucson, AZ, water leaders from around the State and members of that community will be gathering to celebrate the arrival of central Arizona project water to southern Arizona. Our lifeline is online.

Mr. President, this event is the culmination of almost three-quarters of a century of hard work by many individuals. The realization of the dream to bring Colorado River water to Arizona's thirsty farmlands and cities began in 1934, the year of the Colorado River war. That year, the Metropolitan Water District of California began to build Parker Dam. This project would have siphoned off a large portion of Colorado River water. Fearful that Arizona would not get its fair share, Gov. Benjamin Moeur declared martial law and sent the Arizona National Guardsmen to Parker, AZ, to halt construction of this water project. Well, the Arizona Army was successful in stopping construction but we lost in the courts and Parker Dam was eventually built.

But this episode in our history showed us the importance of building the means for Arizona to use its share of Colorado River water. This event was the genesis of the CAP.

For my colleagues who are not familiar with the central Arizona project, I would like to take a few minutes to explain the purposes of the project and its importance. The central Arizona project was authorized by Congress in 1968 to bring our State's Colorado River allocation 336 miles across Arizona to the rural and metropolitan communities of central and southern Arizona. At the time construction began, it was the largest water project ever attempted. The water supply in this desert region of the Southwest consists almost entirely of ground water. Because of growth and development in this area, the overdraft of ground water is nearing a critical stage. The CAP will enable Arizona to put its allotment of Colorado River water to beneficial use while at the same time reducing the overdrafting of our precious ground water supplies.

The CAP did not come to Tucson because of the work of one or two people. The arrival of CAP water in Tucson is due to the hard work of many dedicated and capable individuals. It is the result of the committment of Arizonans such as Carl Hayden, Stewart Udall, Barry Goldwater, Paul Fannin, Ernest McFarland, John Rhodes and too many others to name. It is because Members of Congress such as JAMIE WHITTEN, MARK HATFIELD, TOM BEVILL, BENNETT JOHNSTON, JOHN STENNIS, and ROBERT BYRD supported. It is because a lot of employees at the Bureau of Reclamation and the Department of the Interior worked tirelessly to ensure its timely completion. Arizona is truly the beneficiary of the hard work and commitment of these and many other individuals.

There is one person who I did not mention who will not be in Tucson today but deserves special recognition nonetheless. That person is Mo Udall. Mo is, in my opinion, the individual most responsible for the event occurring in Arizona today. He has been the leader in the battle for protecting our precious water supplies and his influence within the Arizona delegation will be missed.

Mr. President, I ask that my colleagues join me in recognizing the achievements of the many who have made this day in Tucson possible.●

SAN DIEGO DISABILITY AWARENESS WEEK

● Mr. SEYMOUR. Mr. President, the community of San Diego will hold the Fourth Annual Disability Awareness Week, October 7 through 11, 1991.

Through the combined forces of consumers and agencies who serve the disabled, the Disability Awareness Week

Network [DAWN] has organized numerous events throughout the week to increase the San Diego community's awareness, acceptance, and inclusion of persons with disabilities through highlighting the barriers they face on a daily basis.

On Friday, for example, DAWN will hold the first annual politicians and celebrities wheelchair obstacle course race.

DAWN is chaired by Carolyn Dolen, and California's First Lady, Gayle Wilson, is the honorary chairperson for DAWN, which includes members from throughout the community.

To the disabled community and the members of DAWN, the words of Moliere are well known: "The greater the obstacle the more glory in overcoming it."

Through DAWN's efforts, the entire San Diego community will come to know better the daily obstacles overcome by the disabled and hopefully to understand the daily acts of courage required by the disabled to live.

I ask the Senate to join me in commending the efforts of DAWN and to urge the entire San Diego community to recognize and participate in Disability Awareness Week.●

STATE, JUSTICE, COMMERCE APPROPRIATION

● Mr. ROCKEFELLER. Mr. President, while I supported the conference report to accompany H.R. 2608, I want to express my sharp disappointment with the results relating to the Commerce Department's administration of our unfair trade practice laws.

While the Senate approved the administration's full request for slightly more than $18 million, the House did not, and the conference outcome was even slightly below the House figure, or approximately $1.5 million below the administration request.

While I have not generally been overwhelmed with this administration's trade policy and particularly with the strength of its determination to defend critical American industries, I have been impressed with Assistant Secretary for Import Administration Eric Garfinkel's efforts to defend our trade laws in cases presented to him. Although he has not reached out aggressively to self-initiate complaints when conditions warranted, he has been a staunch defender of the integrity of U.S. law in the Uruguay round negotiations—where it has come under severe attack—and he has fairly administered it in the United States. An important element of his capacity to do that is adequate resources, and it is unfortunate that the conferees have not seen fit to adequately fund this important function.

Aggressive enforcement may be particularly important next year if, as some anticipate, the steel industry once again is forced to use our trade laws to defend itself. The administration seems determined to let the VRA Program expire at the end of next March, and the Multilateral Steel Agreement negotiations have thus far produced a text unacceptable to the vast majority of the industry as well as those of us in the Congress that follow this issue closely. Since dumping continues to be widespread, with the low prices that have resulted in the market seriously injuring the U.S. industry, it would not surprise me if the industry concluded that the only choice it has is to pursue antidumping and countervailing duty complaints with the Commerce Department.

Should that occur, I am afraid that we will find the Department short of resources to conduct adequate investigations. If we reach that point, I hope the committee will consider a supplemental appropriation. No one has been more determined than the chairman, the Senator from South Carolina [Mr. HOLLINGS], to defend American manufacturers from the unfair trade practices of our trading partners. I am confident this conference report does not represent his preferred outcome, and I hope we will be able to rely on his determination in the future to assure adequate funding.●

ENVIRONMENTAL PROTECTION AGENCY

● Mr. SIMON. Mr. President, Tuesday, the Senate passed a long overdue bill to elevate the Environmental Protection Agency to Cabinet-level status. I am referring to Senator GLENN'S Department of the Environment Act. I commend him for his dedication to putting environmental issues among our Nation's top priorities.

Concern over the environment has grown rapidly in the past two decades. It is now one of the issues of highest concern to all Americans. We recognize that decisions we make affecting the environment can have major consequences for our own lives and the lives of our children and generations into the future. Many pressing environmental issues today have no State or national boundaries. The problems we face and the solutions to those problems are nationwide and worldwide. These issues are of such an importance to deserve attention in our Government by a Department with the highest stature and authority. The establishment of the Department of the Environment will let Americans and people throughout the world know the United States is determined to provide leadership on environmental issues and that we have environmental issues high on our list of priorities.

By upgrading the status of the Environmental Protection Agency to the Department of the Environment [USDE], the United States will be making a strong commitment to continued leadership on environmental issues. This legislation will clearly enhance the ability of the Agency to implement national and international policy. In addition to the stature our representatives will gain with Department status, the USDE will have authority to provide technical and financial assistance other nations may need to deal with environmental issues affecting all of us. It will encourage other nations to work together with the United States to tackle pressing issues such as air and water pollution.

Certain environmental issues are of concern specifically to us in the United States, but these problems are not restricted from crossing State borders. An institution of Cabinet-level rank will have the stability and standing to address these problems. The Secretary of the Environment will have direct lines of communication with the President and other Department Secretaries, and environmental issues will be given the attention they deserve.

This country can demonstrate its dedication to preserving the environment for future generations by providing proper status and resources to the solution of environmental problems. I believe this first step should put us firmly on the path to ensuring that the United States remains a recognized and respected leader in national and international environmental policy.●

IT IS TIME FOR CONGRESS TO TAKE THE LEAD IN RECYCLING

● Mr. GORTON. Mr. President, Senator BRYAN and I have introduced legislation in this Congress which would make it mandatory for the U.S. Government to use recycled paper products. Passage of this bill is an important first step in creating viable markets for recycled products.

I am proud to say that my home State of Washington has taken a leading role in the effort to institutionalize recycling as an effective and efficient use of our precious resources. Clearly, landfills are not the answer and burning our trash creates environmental side effects. Recycling is our best choice.

Recently, I solicited advice from thousands of Washingtonians on our bill, the National Market Enhancement Act of 1991. The overwhelming majority of those I contacted favored this bill. Not only do they favor the bill, but many had exciting and encouraging stories to tell about recycling programs in their communities.

Many had worked on recycling projects and seen firsthand the problems recycles face. A major problem for local governments and private business involved in recycling is that there is no market for their recycled goods. Warehouses are full of used newspapers, plastic, and so forth because

there is not enough of a market for recycled goods. Our bill will require the Government to buy recycled paper and thus help create markets for recycled goods.

While some people did not agree with our bill, the majority of those people did not disagree with the idea. Rather, their opposition came because they saw our bill as simply another chance for Government bloat and bureaucracy to grow. I am not deaf to these concerns.

Anytime there is a new Government program there is the possibility that bloat and bureaucracy will follow. However, I believe that this bill is important and feel strongly that with proper oversight, this bill will help us achieve our recycling goals in America without creating another bureaucracy.●

COUNTRY MUSIC MONTH

● Mr. SASSER. Mr. President, Congress has declared October "Country Music Month." This week, Music City USA, Nashville, TN, played host to President and Mrs. Bush during the Country Music Associations' annual awards ceremony.

An important part of the awards ceremony was the presentation of the Irving Waugh Award of Excellence to Mrs. Jo Walker-Meador, executive director of the Country Music Association. Jo is retiring after 33 years of diligent work on behalf of country music.

It is indeed not an exaggeration to say that, in very large measure, the increased popularity of country music and the success of country music performers is due to her tireless efforts as the leader of the Country Music Association. CMA was formed in 1958 to serve as a booster organization. At the time, country music was being played on 81 radio stations—today it is heard on more than 2,500 by 28.7 million people. On Wednesday, millions of Americans viewed the CMA awards ceremony on television. Many of those viewers tune in regularly to the Nashville Network. Clearly, country music is more popular than ever. Jo has done her job well.

While the Entertainer of the Year, Garth Brooks, was honored for his song "Friends in Low Places," Jo Walker wins friends for country music in many places. On November 7, the CMA will honor Jo with a gala event. I am pleased to join with the CMA in recognizing Jo Walker-Meador for her years of devotion to and promotion of country music.●

THE NEEDS OF DESERT STORM VETERANS AND THEIR FAMILIES

● Mr. CRANSTON. Mr. President, the Veterans' Affairs Committee recently reported S. 1553, legislation I authored to address an important need among Persian Gulf war veterans and their families to receive counseling services for problems related to the veterans' wartime service. Under the current VA and DOD health care systems, the availability of marriage and family counseling services, even for problems relating to the stresses caused by the war, is inconsistent and depends on whether the individual service member remains on active duty or is discharged from service or deactivated to reserve status.

In the September 30, 1991, edition of the Army Times an article by P.J. Budahn provides what I believe to be a brief, thoughtful perspective on the problems confronting Persian Gulf war military families and the need for prompt enactment of S. 1553. I commend this article to my colleagues.

Mr. President, I ask that the Army Times article be printed in the RECORD at this point.

The article follows:

[From the Army Times, Sept. 1991]

EMOTIONAL DEBRIS FROM DESERT STORM MUST BE PICKED UP

(By P.J. Budahn)

Desert Storm may go down in the books as our first war in which U.S. civilian casualties exceeded military ones.

The number of U.S. military people killed, wounded and otherwise injured during the lightning desert war was, mercifully, low.

But some psychologists are concerned about the emotional wounds inflicted on the people who never wore a uniform, especially military families.

"Loved ones were probably more effected psychologically than the people there [in the Persian Gulf theater], partly by the long period of uncertainty before the fighting began and partly by CNN bringing it into their homes," says Jerry Braza, a Salt Lake City counselor and author of "Coping with War and Its Aftermath."

I saw a scaled-down version of this phenomenon in my own family. I spent the first three weeks of the air war in Dhahran, one of the Saudi Arabian cities that was a target for Iraqi Scud missiles.

After a few Scud attacks, my blood pressure ceased to skyrocket at the sound of an air-raid siren. I had confidence in the Scud-killing Patriot missile, and I realized a single Scud with a conventional warhead was a lesser threat to me personally than a single Saudi taxi driver who was making up the rules of the road as he drove along.

My family in the States, however, saw hyped-up CNN broadcasts from the same city. With every incoming Scud, they were frightened for me. I was fine.

They imagined threats for me. I was there and I knew firsthand that the danger was minimal.

It doesn't surprise me to learn there are families of Desert Storm vets in which the service member is OK, but the spouse and kids are shellshocked.

Sadly, it also doesn't surprise me to learn that some folks needing help from the military are falling through a legal loophole, or that the Pentagon is opposing efforts to string a safety net across the gap.

The loophole affects the families of Desert Storm vets who've retired since coming back from the gulf and the families of guardsmen and reservists. Those people would seek help from the Department of Veterans Affairs, not the military.

VA counseling centers—in one of the least known veterans benefits—can provide psychological treatment for the spouses and kids of veterans.

But there's a hitch. The federal law that authorizes the treatment says spouses and kids can be helped only if it's necessary for the success of counseling that the vet is receiving. If the vet doesn't need counseling, then there's no legal authority to help the family.

Sen. Alan Cranston, the California democrat who chairs the Senate Veterans Committee, has a straightforward, low-cost solution to this problem He wants to tinker with the wording of federal law to let the families of veterans qualify for VA counseling, even when the veterans don't need it.

"Putting this into effect as soon as possible is vital," says Dorsey Chescavage, a specialist in medical programs with the National Military Family Association.

By Washington standards, the cost would be minuscule, about $10 million per year. Still, the chances for this bill, known as S. 1553, are iffy.

The Pentagon opposes it, calling it unneeded. Veterans groups, which normally rush to the barricades for anything that helps former service members, are worried that $10 million spent on this safety net will mean $10 million less for VA hospitals. Ten million dollars will pay for a lot of badly needed nurses.

We have to sort through our priorities. Desert Storm was a different kind of war. It created different casualties.

"It was an extremely anxious time for families," says Gaye Jacobson, founder of Operation Yellow Ribbon, a nation-wide help-the-troops effort start in South San Francisco.

"Families went through tremendous anxieties, not knowing when the war would start, anticipating enormous casualties," she added. "It was like waiting for a fast-moving train to hit."

The train has come and gone. Now we have to deal with the wreckage—all of it.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SARBANES. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 320. Ming Hsu, to be a Federal Maritime Commissioner;

Calendar 321. Rudy Boschwitz, to be a member of the Board of Directors of the Communications Satellite Corporation; and

Calendar 322. James C. Card and Roger T. Rufe, Jr., for appointment to the grade of rear admiral (lower half) U.S. Coast Guard; and

All nominations placed on the secretary's desk in the Coast Guard.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1991 AND 1993—CONFERENCE REPORT

Mr. SARBANES. Mr. President, I submit a report of the committee of conference on H.R. 1415 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1415) to authorize appropriations for fiscal years 1992 and 1993 for the Department of State, 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 October 3, 1991.)

Mr. PELL. Mr. President, the pending conference report authorizes a total of $5,610,594,500 for fiscal year 1992 and $5,912,106,000 for fiscal year 1993 for the Department of State, the U.S. Information Agency, and the Board for International Broadcasting. In formulating this legislation, the Foreign Relations Committee and our counterpart in the House have endeavored to respect budgetary constraints. I am pleased to note that we have been successful in that endeavor. This legislation is consistent with the Budget Enforcement Act caps for function 150, the international affairs function, for fiscal year 1992.

The bill authorizes $4,311,433,000 for fiscal year 1992 for the Department of State. It provides for full repayment over the next 4 fiscal years of arrearages, in line with the President's commitment to repay all arrearages. In recognition of the enormous and pressing refugee needs worldwide, the bill authorizes $630 million for refugee assistance for fiscal year 1992, an increase of $140 million over the administration's request.

The bill authorizes $1,086,670,500 for USIA for fiscal year 1992. As one who has long been an advocate of exchanges as a means of improving international understanding, I am pleased that this legislation establishes new exchange programs and provides increased resources for existing programs. These exchanges, particularly those focused on the new democracies of Eastern Europe, the Baltic Republics, and the Republics of the Soviet Union, are dollars well spent. I am also pleased that the conferees accepted a provision in the Senate bill, which I offered, mandating the establishment of a cultural center in Kosovo in Yugoslavia.

Mr. President, as many of my colleagues know, the structure of the Foreign Relations Committee was altered this year to enlarge the role and responsibilities of the subcommittees. This legislation is proof that that structure is working. The bill has enjoyed strong bipartisan support from the beginning of the process when it was marked up, for the first time, at the subcommittee level.

The subcommittee chairman, Senator KERRY, and the ranking minority member of the subcommittee, Senator BROWN, have taken their responsibilities seriously and have done an excellent job in shepherding this bill throughout the legislative process. I would like to thank them for their good work and the important contributions they have made to the substance of the bill and the process.

This is a good bill and one that I believe the administration can support.

Mr. KERRY. Mr. President, I am very pleased that the Senate is about to vote on the conference report for H.R. 1415, the State Department authorization bill. This is the culmination of a long but productive bipartisan process. It is a process that has produced a bill in line with budgetary realities and the President's request.

Let me summarize the conference report's provisions.

First, the bill authorizes a total of $5,610,594,500 in fiscal year 1992 and $5,913,106,000 in fiscal year 1993 for the operations of the Department of State, the U.S. Information Agency, and the Board for International Broadcasting.

For fiscal year 1992, the bill includes $4,311,433,000 for the operations of the Department of State. This is approximately $94 million more than requested by the administration and reflects an increase of $140 million for refugee assistance, for a total authorization of $630 million. Of this amount, $80,000,000 is authorized for refugees resettling in Israel.

Further, the conference report authorizes $130 milion for the United States Embassy in Moscow and provides the administration with flexibility to establish new posts in the Soviet Republics as well as in Lithuania, Latvia, and Estonia. It also includes authorization for the full repayment of U.S. arrearages to the United Nations, its specialized agencies and international peacekeeping efforts.

There are significant provisions in this bill unrelated to funding. The bill mandates the creation of a new position, the Assistant Secretary of State for South Asia with responsibility for India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, Afghanistan, and the Maldives. Under the current structure at the State Department, Policy issues related to these countries often become obscured by attention to Middle Eastern issues and problems.

In my view, creation of the new bureau will ensure that important issues related to South Asia, including weapons proliferation, will receive greater attention.

The conference report also revises United States policy on the issuance of Israel-only passports in an effort to end the practice by many Arab states of prohibiting entry to visitors whose passports or other documents reflect that the holder has visited Israel. It also provides the Department with greater flexibility to manage its financial affairs, to meet the educational needs of Foreign Service officers, and to respond to overseas emergencies where American lives and property are at stake.

The bill authorizes $1,086,670,500 for the operations of the U.S. Information Agency. This figure includes funding for the creation of several new and worthwhile exchange programs. Most of these focus on exchanges with the Soviet Republics, the new democracies in Eastern Europe, and the Baltic Republics.

The bill also establishes a scholarship program for Vietnamese students to come to the United States and mandates USIA to open a cultural center in Laos. As the sponsor of these provisions, I believe they make an important contribution to the propagation of American political and economic values in Southeast Asia.

Finally, the bill includes important provisions to combat the use and proliferation of chemical and biological weapons. These provisions impose sanctions on countries that use chemical and biological weapons and companies that supply equipment for their manufacture. Had these sanctions been in place earlier, Saddam Hussein's arsenal might not have contained these weapons of mass destruction.

Mr. President, I would like to thank the distinguished chairman and ranking minority member of the committee, Senators PELL and HELMS, for their support of this bill and the process in which it was created. I would also like to thank my colleague from Colorado, Senator BROWN, for his cooperation and input into this process. I believe that this is a good bill and one that all Members and the President can support.

Mr. HELMS. Mr. President, as the Senate considers the conference report to accompany H.R. 1415, the Foreign Relations Authorization Act for Fiscal Years 1992 and 1993, it is important to discuss how several issues were resolved—in and out of conference, and thereby establish some guideposts for the legislation as it is carried out.

When conferees met on September 24, one issue was unresolved. It remains unresolved in this conference report. The issue is chemical weapons production and technology, including the vital question of sanctions against those companies and individuals who lack the humanity to cease poison gas and other chemical production voluntarily.

Americans were horrified when thousands of troops had to don gas masks and other protective gear during the gulf war. As I have repeatedly pointed out, chemical weapons are a threat because numerous international companies cheerfully sold technology, expertise, and toxic materials to Saddam Hussein. Truly, these corporations and individuals represent Saddam's Foreign Legions.

Every year for the past 4 years, this Senator and other Members of Congress, have repeatedly sought to enact a tough chemical weapons bill with import sanctions. Every year, one or another element of the Congress or the administration has frustrated the effort. Sometimes the opposition was based on a philosophical opposition to import sanctions, but often it was nothing more than a turf fight.

The conference report before the Senate contains a partial solution: A chemical weapons bill without import sanctions. The Senator from North Carolina, with the Foreign Relations Committee chairman, Senator PELL, and Representative BERMAN, the chairman of the International Operations Subcommittee in the other body, fought hard to include import sanctions in the pending conference report.

It was clear, however, that import sanctions would trigger a point of order against the entire conference report if it had been filed in that form. In order to resolve this problem, once and for all, it was essential to agree on procedures to assure that a tough chemical weapons bill with import sanctions will be enacted during this Congress.

Mr. President, that kind of effort could only result from a consultation with Members from both parties and each House of Congress. I support this conference report based on the assurances which have been given that a free-standing chemical weapons bill will be reported to the House floor expeditiously and, once passed in the other body, will be scheduled for an early vote in the Senate.

Such a bill already exists, thanks to the efforts of Representative BERMAN and Chairman DANTE FASCELL of the Foreign Affairs Committee. It has been reported from their committee and is scheduled for markup by the Ways and Means Committee on October 10. I am assured that Ways and Means Chairman ROSTENKOWSKI is committed to reporting a clean bill, with import sanctions, and that the Speaker has indicated it will be considered speedily by the other body.

Once passed in the other body, the free-standing legislation will be on the Senate Calendar. Thanks to the efforts of the majority leader, I believe the Senate will move on this vital topic, and that it will avoid mixing other topics with chemical weapons.

Mr. President, because supporters of chemical weapons legislation have been burned a number of times, the Senator from North Carolina believes his position should be made crystal clear. I anticipate that the good-faith assurances of the many Members of Congress will be carried out as agreed. In the event they are not, opponents of chemical weapons will not be snookered again. Let us consider this as an insurance policy to make sure everything moves in the right direction and with haste.

The two most labor-intensive and time-consuming legislative efforts of the Foreign Relations Committee during every Congress are this authorization and the one for foreign aid. Early in the 102d Congress, subcommittee chairmen of the Foreign Relations Committee demanded much greater autonomy over legislation, oversight, and confirmations. Yielding to bureaucratic instincts, it was immediately assumed that an enormous increase in professional staff positions for the majority party would be indispensable to carry out committee decentralization.

This Senator rejected, and rejects, that formula. As ranking member, the Senator from North Carolina did not accept the need for additional minority staff positions. It was clear that more staff would not only cost more money in salaries and benefits, but that there would be a rapid increase in associated costs, such as travel for newly appointed staff.

Mr. President, I begin my remarks with these observations because the record should be clear. The Foreign Relations authorization conference report before the Senate was accomplished without an increase in committee staff. In that respect, the committee saved taxpayer funds. And in an equally important aspect, the work product of the committee is of a much higher quality than some recent State Department authorizations.

Chairman PELL, and the chairman and ranking member of the Subcommittee on International Operations should be congratulated for their good efforts on this legislation. The Senator from Massachusetts, JOHN KERRY, seized on the complicated topical areas of the State Department, United States Information Agency, Board for International Broadcasting, and other agencies in this portion of the 150 budget account.

Senator KERRY recognized that a solid legislative produce could result only if procedures were open and all Senators were permitted full participation. From the outset, he signaled this approach by building a full partnership with the junior Senator from Colarado, HANK BROWN, the ranking member of the subcommittee.

Senator BROWN approached issues after 10 years experience in the other body and with his special qualifications. He is a certified public accountant as well as a lawyer. Senator BROWN made it clear throughout the past 6 months as this legislation was being crafted, that waste, fraud, and abuse were his first targets. In addition, his goal of promoting free commerce and protecting the interest of the American consumer were notable throughout the process.

Mr. President, I commend these two Senators for their fine work.

As ranking member of the Foreign Relations Committee, I believe it is important to discuss several other plus and minus features of the pending conference report for the purpose of legislative history.

The thorny issue of the Moscow Embassy is not resolved in this conference report, Mr. President. As a supporter of the need for a new, secure building in place of the hopelessly bugged new office building, I had hoped this would be clarified by now.

Until October 2, the State Department was silent on construction options. At that point, Mr. President, high administration official apparently decided to talk to the two chairmen of the Commerce, Justice, and State Department Appropriations Subcommittees. The existence of a deal, as well as all details, were apparently kept secret from: First, all members of authorizing committees; second, all Republican members of the relevant Appropriations subcommittees; and third, their staffs.

This puzzling, counterproductive behavior led to spirited discussions on October 3, as the other body considered the Commerce, Justice, and State Department appropriations conference report. Not surprisingly, the debate was directed by Representative SNOWE of Maine, a tenacious and effective advocate of tearing down the present structure and replacing it with a secure one.

Mr. President, during my years in the Senate, I have frequently pointed out the elitism and virtual arrogance which exists, particularly at the higher eschelon of the State Department. The secret plan, or Moscow missile, may have represented a detachment from reality or it may have been what North Carolina folks sometimes regard as a bonehead play.

It may even be that the State Department's October surprise is a good idea. But the whisper lobbying campaign by the State Department resulted in the inevitable backfire in the other body on October 3. This Senator trusts that the State Department will

provide full, detailed briefings on its secret plan even to the authorizing committees it chose to ignore.

The Moscow missile is the latest example of State Department casual unresponsiveness to Congress. If the constitutional separation of powers is to be maintained as a lively reality instead of a dusty textbook, oversight of Federal agencies and organizations receiving taxpayer funding is absolutely essential. Yet, rather than prompt and complete responsiveness, the State Department appears to become more and more isolated from oversight committees. As a result, the conference committee adopted several important steps in an attempt to drag State Department heads out of self-generated clouds.

A proposal offered by the senior Senator from South Dakota [Mr. PRESSLER] has been preserved in the present conference report as section 196. It requires that the State department respond within 21 days to questions posed by members of authorizing committees. This Senator, and my 99 colleagues, surely expect constituent mail to be answered within 3 weeks. Members of the Foreign Affairs and Foreign Relations Committees are constituents of the State Department.

If the State Department bureaucracy is so decrepit or willfull that it cannot or will not respond in 3 weeks, the Pressler provision requires the Secretary of State to send what amounts to an interim reply, explaining the reason for the delay and giving a date by which the response will be delivered.

One of the handiest tools used by executive branch agencies to keep Congress in the dark, Mr. President, is needless classification of documents. Proper classification of matter relating to vital national security concerns of the United States have my full support. But classification that covers up information that might merely provide to be an embarrassment is inexcusable. For that reason, I am delighted that my amendment was preserved, and even strengthened in conference, section 114, to declassify significantly those portions of the so-called K-Fund for emergencies in the diplomatic and consular service.

Senators will recall that, during consideration of this legislation by the Senate on July 29, the Senator from North Carolina sought to strike a provision from the committee-reported bill which would have permitted retroactive reimbursement to New York City for private citizens speaking to the United Nations. Specifically, I was concerned about the hoopla during Nelson Mandela's visit to New York and other cities in 1990. Tickertape parades, political rallies at Yankee Stadium, and similar activities generate security costs which should and must be born by the host city.

The conferees preserve portions of the provision as offered by the Senator from New York, but with important restrictions to assure that the State Department cannot reimburse local jurisdictions for reasons that bear no relation to protecting foreign diplomats on official trips. This is section 135 of the conference report.

Mr. President, section 149 of the conference report is designed to end abuses by career ambassadors who twist the State Department personnel system in order to retire before age 50 at full benefits, so they can take lucrative private sector jobs. In one case, I am convinced that an ambassador abused his foreign assignment to create a mink-lined safety net in international business, while using retirement law to cash in on unearned benefits.

When the Congress considered this legislation for fiscal years 1988 and 1989, it instituted a personnel commission to examine the Foreign Service system at the State Department. That prestigious Commission, chaired by John Thomas, made a number of bold recommendations to improve operations, end abuses, and save money.

With blinding speed, the State Department appointed a favored career ambassador to head a competing personnel study which was intended to confuse and dilute Thomas Commission recommendations. I regret to inform the Senate that the chairman of the competing commission cashed in for early retirement, prior to age 50, which this conference report ends in section 149. Nice work, if you can get it.

In any event, section 150 mandates the creation of a Commission similar to the Thomas Commission, but with a broader mandate. Mr. President, I trust that the State Department will not create a competitive Commission as it did in the past.

The personnel commission created in section 150 is to be made up of qualified experts, and it is the hope of this Senator and Chairman PELL that, to the maximum extent possible, alumni from the Thomas Commission will be reappointed.

The Commission's first task is to evaluate implementation of Thomas Commission recommendations. This is vital to establish a baseline for the new study, and gives Congress an unbiased assessment of progress, if any. The Foreign Relations Committee has been told that a considerable number of Thomas recommendations have been put into effect, but this cannot be confirmed. Whether or not Senators or Members of the other body support the Thomas recommendations, the implementation study is basic and essential.

As part of the Commission's broadened mandate, the role of the State Department's second class citizens, its Civil Service employees, is to be examined. The consumptive elitism of the Foreign Service as an institution and of a number of its most prominent members is legendary, as I stated earlier. Gigantic cash awards, rapid promotions, and sweetheart assignments all appear to be readily available for those favored by top Foreign Service management. Few, if any, comparable benefits accrue to the thousands of effective civil servants at the State Department. This makes no sense.

Another expansion of responsibilities for the Commission created by section 150 is a requirement for a detailed study of personnel practices at the U.S. Mission to the United Nations. According to a memorandum from the Executive Secretariat at the State Department, issued early in the Bush administration, the mission is an integral part of the Bureau for International Organization Affairs which reports to and through that Bureau to the Secretary of State. Clearly, during the gulf war, there were many times when direct communication was needed.

The personnel commission created in the conference report is created largely because of the backward way Congress has been consulted on proposed personnel policies and changes at the Mission to the United Nations. The Foreign Relations Committee has been told that all problems are being studied and worked on, and that, as soon as a plan is ready to be implemented Congress will be consulted. This is not good enough, Mr. President.

The State Department had months prior to submitting its request for authorization to consult Congress. The result was silence. Then, contrary to recommendations of the State Department's own inspector general and Civil Service ombudsman, personnel practices were undertaken which have had a negative effect on the morale of most United States United Nations [USUN] employees, civil servants. There are personnel problems. Solutions are possible which can be long-lasting. In frustration, conferees turn to a personnel commission to help resolve them in consultation with Congress.

Mr. President, Congress also needs to see the legal opinion on which the decision was based to give an 8-percent location pay bonus to Foreign Service employees at the U.S. Mission. Personnel experts seem to believe that this was either an unwise practice, or that it may have been illegal.

Section 174 also relates to problems created by failure to consult Congress on the thorny and persistent problems with housing for mission employees. Everyone knows that the New York Metropolitan area has extraordinarily high housing costs. Yet millions of average Americans live there. It is ludicrous and untenable for some Foreign Service employees at the U.S. Mission to argue that they must live in high rent areas near U.N. Headquarters in the Borough of Manhattan when the majority of unprotected civil service

employees at the mission are compelled to commute to save money.

Representative KASICH of Ohio wisely requested a study of housing costs and needs at USUN. During committee consideration, I offered a similar amendment. As with personnel problems, real problems exist in USUN housing and real solutions can be found that are cost effective. The section 174 study requires specific justification, by position, of those employees who must live in Manhattan, close to the United Nations.

As the vast majority of employees will not, in all likelihood, fall into that category, it will be possible to construct a fair, reasonable, lower-cost housing program on the basis that most employees will be unable to afford Manhattan locations with fashionable addresses. In addition, the study mandates an examination and proposal for lower-cost housing for the Permanent Representative to the United Nations.

Mr. President, if the State Department is known as aloof and uncommunicative with Congress, the U.S. Mission is even more so. These provisions are in no way punitive, but aim to break the logjam created by an unclear line of authority to make decisions within the State Department, exacerbated by mission management's tendency to go it alone without good faith consultations with Congress and sometimes even avoiding regular State Department approval processes.

Section 170, Mr. President, requires yet another report on the Unesco. Following the State Department's definitive report required as part of the authorization for fiscal years 1990 and 1991, Unesco apologists who are charmed by new management are eager to compel U.S. reentry although little, if anything, has improved in a substantive way. The section permits an update of the situation in a report.

Also regarding the United Nations, Mr. President, a sensible proposal by Senator PRESSLER requires additional hiring of U.S. citizens by some international organizations. If the U.S. taxpayer is to be compelled to pay 25 percent of the regular budget of most organizations, 30.7 percent of peacekeeping costs, and bounteous voluntary contributions, the very least Americans ask is that organizations with hiring targets employ added Americans.

In title II of the conference report, conferees went on a virtual binge of exchange programs. I regret that it appears that very little thought or careful consideration went into most of them. However, it is clear, Mr. President, that the welcomed disintegration of the Soviet Union results in new opportunities. The Senator from North Carolina welcomes the desire of some sponsors of new exchange programs to make citizens of the Republics of Lithuania, Estonia, and Latvia eligible.

Some Senators refused to make citizens of those countries eligible. Those governments and Americans whose forefathers came from them should ask those Senators why these free countries have been excluded.

I also welcome language throughout the conference report, at the insistence of the minority leader and Senators MURKOWSKI and PRESSLER, to target United States programs and expand United States official presence in newly independent former Soviet republics, such as Russia, Moldavia, Armenia, and Georgia.

Mr. President, extraordinarily modest attempts are made in the conference report to assure greater competition for grants made by USIA. Inspector General George Murphy reported that as many as 77 percent of grants are given noncompetitively. Special interests detest the very thought of competition and have had their way in this conference report. USIA should be encouraged to do the right thing.

In addition, a glancing blow was aimed by Conferees at the National Endowment for Democracy. NED might win friends on both sides of the aisle if the chairman and ranking members of the Foreign Relations Committee, and staff, were fully involved and appraised of the Endowment's activities as well as those of core grantees. Until they are, this Senator anticipates GAO's review of NED compliance with the GAO recommendations on grant-making made in March 1990 and reports of the USIA inspector general now that that office will be auditing NED.

The conferees wisely included the Senate's provision to begin setting up a "Radio Free China" service. Rapid, effective implementation of the results of the proposed study can help liberate the hundreds of millions of Chinese crushed by socialist and Communist tyranny.

Title III of the conference report contains a number of wise provisions as well, for example: Section 304, offered by Senator GRASSLEY, regarding terrorist assets; sections 323–325 regarding missiles; and section 355 on Tibet.

In sum, Mr. President, I support this conference report and look forward to future oversight efforts of the Foreign Relations Committee to assure full participation of authorizing committees in the foreign policy process.

Mr. BROWN. Mr. President, the Senate's action today in passing the conference report on the State Department authorization bill, H.R. 1415, is the final step in the important process of developing an authorization for fiscal years 1992 and 1993 for the State Department and related agencies.

The successful passage of this bill was made possible by the combined efforts of many Members of this body and their staff. Most important have been the efforts of Senator JOHN KERRY, the chairman of the International Operations Subcommittee, as well as those of Senator HELMS and Senator PELL. Through their leadership the subcommittee has developed an effective process to accommodate the differing views of each member to the greatest extent possible. This bipartisan approach and spirit of cooperation has meant a great deal more work for our staffs, however.

Nancy Stetson, the subcommittee's majority staff director, Bruce Rickerson, of the committee minority staff and Carter Pilcher of my staff together have worked tirelessly to finalize this conference report.

On the whole, the conference report is a solid piece of legislation. During the meeting of the conference, however, several important Senate provisions were either deleted or significantly modified. Some of the greatest resistance the Senate conferees met in the conference was to provisions in the Senate amendment to H.R. 1415 which would begin to get the United States back on its feet financially.

Making unsound loans to foreign governments and then sticking the American taxpayer with the bill has become a boom business for the U.S. Government's foreign policy establishment. In the last few years, our Government has forgiven billions of dollars in loans to Poland, to Egypt, and to other countries. Now, we're planning to write off or write down another $11.8 billion in Latin American debt. The U.N. Secretary General has urged the West to write off $270 billion in African debt, and the Soviet Union is now lining up for billions in loans experts believe it does not have the resources to repay.

The Senate amendment to H.R. 1415 included two provisions that would put the Congress in a firmer position to ensure the loans we authorize are in fact repayable. The first was a provision requiring the development of a uniform standard of credit for all of the U.S. Government's international loans, and a credit check against this standard for every new loan, both bilateral and those through multilateral institutions.

The conferees were somewhat concerned that the provisions originally included in the Senate's amendment would create an overly burdensome reporting requirement for the Departments of Treasury and State. On the other hand, the conferees were in general agreement that information about a nation's creditworthiness should be available to the American people and to Congress before the United States makes loans. Consequently, the conference report includes a reasonable first step toward the development of a routine credit check in the future. The provision requires a report on the standards used to evaluate the creditworthiness of other nations and a year-

ly report on America's outstanding loans.

With these reporting requirements as a basis, Treasury and the State Department should begin moving toward a computerized system that allows a quick credit analysis on any country requesting new loans from the United States or any multilateral institution of which the United States is a member.

The second provision contained in the Senate version of the bill designed to help get the United States back on its fiscal feet was a requirement that any country that receives debt forgiveness or debt reduction under the Enterprise for the America's Initiative would not be eligible for new U.S. loans for 5 years and until that nation can be shown to be creditworthy. Unfortunately, this important provision was dropped by the conferees. That's right. With the largest deficit in the history of the world, the conference dropped the Senate's provision to require that nations defaulting on their loans to the United States must be creditworthy to receive new ones. In the view of this Senator, dropping this provision was a mistake.

The Senate version of the bill also included two very important provisions for the American consumer. One deleted funding for the International Coffee Organization and the other required a complete evaluation of all international commodity organizations from the perspective of U.S. consumers.

The International Coffee Agreement [ICA], and its administrative arm—the International Coffee Organization, were born in 1983 to stabilize global coffee trade by establishing an export quota system. Some say the ICO is not a cartel. Is it? It is if you consider that a cartel is defined as an association by agreement of companies—or countries—or sections of companies having common interests, designed to prevent extreme or unfair competition and allocate markets, and to promote the interchange of knowledge.

The ICA's export quota system for coffee acts directly against the interests of American consumers by keeping prices at artificially high levels. In fact, wholesale prices for coffee fell by 46 percent after the agreement lapsed in 1989. At the same time, U.S. coffee imports increased by 26 percent at a total cost reduction of $548 million due to lower prices.

Although the conferees did not agree that the United State should immediately withdraw from the International Coffee Organization, they did agree that the interests of American consumers should be given top priority as a new coffee agreement is negotiated. I might add the language contained in the bill is not as strong as that passed by the full Senate urging the United States not to agree to anything not in the interests of American consumers.

On the broader scale, the conferees of both the House and the Senate agreed that a report evaluating the special purpose international organizations the United States belongs to is critical, especially since it appears we have joined many of these organizations without looking at their impact on American consumers. During the conference, many Members joined in expressing their concern about the State Department's lack of responsiveness and the necessity of some type of trigger to ensure the report is submitted. Therefore, to ensure the report is completed promptly, the provision contained in the bill withholds $1 million from the State Department's salaries and expenses account until the report is submitted.

Also included in the bill is an important provision requiring a report on China's human rights practices, the PRC's activities in weapons proliferation and restrictions on trade between the United States and China, including internal trade barriers, excessive duties on imports to China, excessive licensing requirements and section 301 violations. It is my hope that this report will be of sufficient detail for Members of Congress and the American public to obtain a clear, thorough understanding of the status of the United States-China relationship before the President announces most-favored-nation trading status next year.

Mr. President, again I commend the efforts of my colleagues on the committee and their staff for their hardwork and consistent efforts to produce this conference report.

The PRESIDING OFFICER. Without objection, the conference report is agreed to.

So, the conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

CRIME PREVENTION MONTH

Mr. SARBANES. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 303, designating Crime Prevention Month; that the Senate proceed to its consideration; that the resolution be deemed read a third time and passed; and that the motion to reconsider be laid upon the table.

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

So the joint resolution (H.J. Res. 303) was deemed read a third time and passed.

The preamble was agreed to.

The Senator from Maryland.

THE CALENDAR

Mr. SARBANES. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of Calender Nos. 247, 249, 250, 251, and 252; that the bill be deemed read a third time and passed; that the resolutions be agreed to; and the motion to reconsider be laid upon the table, en bloc; further, that any statements relating to these calendar items appear at the appropriate place in the RECORD, and that the consideration of these items appear individually in the RECORD.

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

ADDITIONAL MEMBERSHIP ON THE LIBRARY OF CONGRESS TRUST FUND BOARD

The bill (S. 1415) to provide for additional membership on the Library of Congress Trust Fund Board, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL MEMBERSHIP ON THE LIBRARY OF CONGRESS TRUST FUND BOARD.

The first sentence of the first paragraph of the first section of the Act entitled "An Act to create a Library of Congress Trust Fund Board, and for other purposes", approved March 3, 1925 (2 U.S.C. 154) is amended—

(1) by striking "and" after "Librarian of Congress,"; and

(2) by inserting after "respectively)" the following: ", four persons appointed by the Speaker of the House of Representatives (in consultation with the minority leader of the House of Representatives) for a term of five years each (the first appointments being for two, three, four, and five years, respectively), and four persons appointed by the majority leader of the Senate (in consultation with the minority leader of the Senate) for a term of five years each (the first appointments being for two, three, four, and five years, respectively)".

SEC. 2. QUORUM PROVISION.

The second sentence of the first paragraph of the first section of the Act entitled "An Act to create a Library of Congress Trust Fund Board, and for other purposes", approved March 3, 1925 (2 U.S.C. 154) is amended by striking "Three" and inserting "Nine".

SEC. 3. TEMPORARY POSSESSION OF GIFTS.

Section 2 of the Act entitled "An Act to create a Library of Congress Trust Fund Board, and for other purposes", approved March 3, 1925 (2 U.S.C. 156, 157, and 158) is amended by adding at the end thereof the following new undesignated paragraph:

"In the case of a gift of money or securities offered to the Library of Congress, if, because of conditions attached by the donor or similar considerations, expedited action is necessary, the Librarian of Congress may take temporary possession of the gift, subject to approval under the first paragraph of this section. The gift shall be receipted for and invested, reinvested, or retained as pro-

vided in the second paragraph of this section, except that—

"(1) a gift of securities may not be invested or reinvested; and

"(2) any investment or reinvestment of a gift of money shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States.

If the gift is not so approved within the 12-month period after the Librarian so takes possession, the principal of the gift shall be returned to the donor and any income earned during that period shall be available for use with respect to the Library of Congress as provided by law.".

PRINTING OF A REVISED EDITION OF THE SENATE RULES AND MANUAL

The resolution (S. Res. 187) to authorize the printing of a revised edition of the Senate Rules and Manual was considered and agreed to; as follows:

S. RES. 187

Resolved, That the Committee on Rules and Administration hereby is directed to prepare a revised edition of the Senate Rules and Manual for the use of the One Hundred Second Congress; that said manual shall be printed as a Senate Document; and that two thousand additional copies shall be printed and bound, of which one thousand copies shall be for the use of the Senate, and one thousand copies shall be bound and delivered as may be directed by the Committee on Rules and Administration.

PRINTING OF A REVISED EDITION OF THE SENATE ELECTION LAW GUIDEBOOK

The resolution (S. Res. 188) to authorize the printing of a revised edition of the Senate Election Law Guidebook was considered and agreed to; as follows:

S. RES. 188

Resolved, That the Committee on Rules and Administration hereby is directed to prepare a revised edition of the Senate Election Law Guidebook, Senate document 101–26, and that such document shall be printed as a Senate document.

SEC. 2. There shall be printed 600 additional copies of the document specified in section 1 of this resolution for the use of the Committee on Rules and Administration.

PRINTING OF A REVISED EDITION OF "NOMINATION OF THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES"

The resolution (S. Res. 189) to authorize the printing of a revised edition of "Nomination and Election of the President and Vice President of the United States," was considered, and agreed to; as follows:

S. RES. 189

Resolved, That the Committee on Rules and Administration hereby is directed to prepare a revised edition of the document entitled Nomination and Election of the President and Vice President of the United States, Senate document 100–24, and that such document shall be printed as a Senate document.

SEC. 2. There shall be printed 600 additional copies of the document specified in section 1 of this resolution for the use of the Committee on Rules and Administration.

PRINTING OF BOOKLET "OUR AMERICAN GOVERNMENT" AS A HOUSE DOCUMENT

The concurrent resolution (H. Con. Res. 172) providing for the printing of a revised edition of the booklet "Our American Government" as a House document, was considered, and agreed to.

NATIONAL ACCESSIBLE HOUSING MONTH

Mr. SARBANES. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 184, a joint resolution designating November 1991 as "National Accessible Housing Month"; that the Senate proceed to its immediate consideration; that it be deemed read a third time and passed; that the preamble be agreed to; and that the motion to reconsider be laid upon the table.

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

So the joint resolution (S.J. Res. 184), was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 184

Whereas the Congress in the Americans with Disabilities Act of 1990 found that there are 43,000,000 individuals with disabilities in this Nation;

Whereas 70 percent of all Americans will, at some time in their lives, have a temporary or permanent disability that will prevent them from climbing stairs;

Whereas 32,000,000 Americans are currently over age 65 and many older citizens acquire vision, hearing, and physical disabilities as part of the aging process;

Whereas many older Americans who acquire a disability are forced to leave their homes because the homes are no longer accessible to them;

Whereas 1 out of every 3 persons in the United States will need housing that is accessible to the disabled at some point in their lives;

Whereas the need for accessible single-family homes is growing;

Whereas the need for public information and education in the area of accessible single-family homes is increasing;

Whereas this Nation has placed a high priority on integrating Americans with disabilities into our towns and communities;

Whereas the private sector has helped increase public awareness of the need for accessible housing, as exemplified by the national public education campaign conducted by the National Easter Seal Society and Century 21 Real Estate Corporation, entitled "Easy Access Housing for Easier Living"; and

Whereas increased public awareness of the need for accessible housing should prompt the participation of civic leaders, and representatives and officials of State and local governments, in the drive to meet this need: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1991, is designated as "National Accessible Housing Month". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate programs and activities.

Mr. DOLE. Mr. President, I am pleased that Senate Joint Resolution 184 designating November 1991 as "National Accessible Housing Month" was passed by the Senate. On July 26, 1990, President Bush signed landmark legislation guaranteeing the inclusion of people with disabilities into the mainstream of American society. This law, the Americans With Disabilities Act [ADA] is intended to prevent discrimination in employment, public accommodations, transportation, and telecommunications. Just a year prior to ADA, Congress passed the Fair Housing Act amendments, prohibiting discrimination in housing against people with disabilities.

Congress has recognized the rights of 43 million disabled Americans. Seventy percent of all Americans will, at some time in their lives, have a temporary or permanent disability. Currently, 32 million Americans are over the age of 65 and many have or will develop vision, hearing or physical disabilities as part of the natural aging process. Whether a result of an accident, or as part of growing older, accessible or easily adaptable housing is a major concern for millions of Americans.

As we attempt to integrate Americans with disabilities into our towns and communities, it is essential that we realize the obstacles our disabled friends and family members face. Stairs, narrow doorways, and lack of maneuvering room can render a home completely unaccessible. The public needs to become more cognizant of the ways in which individuals can foster integration of the disabled.

Both private and public sectors play an important role in promoting greater integration of people with disabilities through an accessible society. Initiatives begun by the private sector have increased public awareness of the need for accessible housing. This is exemplified through the national public education campaign conducted by National Easter Seals Society and Century 21 Real Estate Corp. This program entitled "Easy Access Housing for Easier Living," identifies key structural features that allow for reasonable entry and circulation without extensive modification.

By designating the month of November 1991 as "National Accessible Housing Month" greater public awareness activities will break down both attitudinal and structural barriers preventing people with disabilities from living

more inclusive lives in their communities. Awareness is the first step toward change Mr. President and Senate Joint Resolution 184 is a step in the right direction toward meeting the necessary changes and making the ADA a reality.

ORDERS FOR MONDAY, OCTOBER 7, 1991

Mr. SARBANES. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 12 noon, Monday, October 7; that, following the prayer, the Journal of the proceedings be deemed approved to date; that, following the time of the two leaders, there be a period for morning business not to extend beyond 12:30 p.m. with Senators permitted to speak therein for up to 5 minutes each; and that, at 12:30 p.m., the Senate return to executive session to resume consideration of the Thomas nomination.

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

RECESS UNTIL MONDAY, OCTOBER 7, 1991

Mr. SARBANES. Mr. President, if there is no further business to come before the Senate today—and I note no Senator seeking recognition—I now ask unanimous consent that the Senate stand in recess as under the previous order until 12 noon, Monday, October 7.

There being no objection, the Senate, at 5:35 p.m., recessed until Monday, October 7, 1991, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate October 4, 1991:

THE JUDICIARY

K. MICHAEL MOORE, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA VICE EUGENE P. SPELLMAN, DECEASED.

DEPARTMENT OF AGRICULTURE

CHARLES R. HILTY, OF OHIO, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE, VICE ADIS MARIA VILA, RESIGNED.

DEPARTMENT OF THE TREASURY

DAVID M. NUMMY, OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE LINDA M. COMBS.

POSTAL RATE COMMISSION

H. EDWARD QUICK, JR., OF MARYLAND, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE TERM EXPIRING NOVEMBER 22, 1996, VICE PATTI BIRGE TYSON, TERM EXPIRED.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

HENRIETTA HOLSMAN FORE, OF CALIFORNIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT. (REAPPOINTMENT)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

MARK MCCAMPBELL COLLINS, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. ALTERNATE EXECUTIVE DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF 2 YEARS, VICE MARK T. COX IV, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 4, 1991:

FEDERAL MARITIME COMMISSION

MING HSU, OF ARIZONA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 1996.

COMMUNICATIONS SATELLITE CORPORATION

RUDY BOSCHWITZ, OF MINNESOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN 1994.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE COAST GUARD

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF):

JAMES C. CARD ROGER T. RUFE, JR.

COAST GUARD NOMINATIONS BEGINNING JAMES E. WHITING, AND ENDING ELIAS J. MOUKWASHER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 2, 1991.

COAST GUARD NOMINATIONS BEGINNING DANIEL C. WHITING, AND ENDING ROBERT C. ALBRIGHT, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 2, 1991.

COAST GUARD NOMINATIONS BEGINNING ROBERT B. BURRIS, AND ENDING WEBSTER D. BALDING, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 2, 1991.

COAST GUARD NOMINATIONS BEGINNING GEORGE M. WILLIAMS, AND ENDING STEVEN J. CORNELL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 16, 1991.