SENATE—*Tuesday, October 15, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

Eternal God, gracious, loving, heavenly Father, my prayer this morning is very personal. It comes from the heavy heart of one who sees, thinks, and feels as a pastor—not as a politician. Jesus' words, "Let him who is without sin cast the first stone," have been very real. None of us is without sin. All of us, except for the Senators, however opinionated or judgmental, are free from the burden of judgment. Senators do not enjoy such a luxury. Commitment to the Constitution requires them to judge, however difficult the decision.

Thank You, Lord, for the tireless, formidable work of the Judiciary Committee who faced an impossible, but inescapable task. May Your grace and peace rest upon them. Give to the Senate righteous wisdom as it comes to the moment of judgment today.

Lord of mercy, a word from St. Paul encourages us at a time like this. "For we know that God works in everything for good to them that love God, to them who are called according to His purpose." (Romans 8:28) Difficult as it is to imagine good from the grueling, crushing, emotional events of the past 4 days, work Your sovereign will for the good of the committee, the Senate, their families and staffs, and the whole Nation. Keep us on course for the future that Your perfect plan for us as a nation will be realized in these critical days.

"Your kingdom come, Your will be done on Earth as it is in Heaven." 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 15, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

VETO MESSAGE ON S. 1722

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the President's veto message on S. 1722, the Emergency Employment Compensation Act, which was received Friday, October 11, 1991.

The clerk will read the message and it will be spread in full upon the Journal.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the message be dispensed with.

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

The veto message reads as follows:

To the Senate of the United States:

I am returning herewith without my approval S. 1722, the "Emergency Unemployment Compensation Act of 1991." I would gladly sign into law responsible legislation that does not threaten the economic recovery and its associated job creation, a fact that members of my Administration and I have repeatedly made clear. We have worked diligently with Members of Congress to encourage them to adopt a well-crafted alternative program of extended unemployment benefits that is paid for, as required under the bipartisan budget agreement. Unfortunately, the Congress has rejected this alternative and ignored my call for passage of measures that will increase the Nation's competitiveness, productivity, and growth.

The Administration is deeply concerned about the needs of the unemployed and their families. It is essential that we take responsible actions to ensure that the economic recovery continues and strengthens, creating new employment opportunities.

If a bill providing unemployment benefits in a responsible manner—financed under the budget agreement—reached my desk, it would be signed immediately so we could provide real additional benefits to the unemployed.

S. 1722 would effectively destroy the integrity of the bipartisan budget agreement and put into place a poorly designed, unnecessarily expensive program that would significantly increase the Federal deficit. Enactment of S. 1722 would signal the failure of budget discipline, which would have a negative effect on financial markets that could threaten economic recovery and lead to increased unemployment. This legislation would not well serve the unemployed or our Nation's taxpayers.

S. 1722 violates essential elements of last year's bipartisan budget agreement. It does not include offsets for costs that the Congress projects at $6.5 billion during fiscal years 1992–95. Instead, it simply adds this cost to the Federal deficit by requiring that the provisions of the bill be treated as "emergency requirements" designated by the President and the Congress under the Balanced Budget and Emergency Deficit Control Act of 1985. This breaches the budget agreement by denying me the independent authority to determine when an emergency exists, thereby removing a key safeguard for enforcing budget discipline.

In addition, S. 1722 is substantively flawed. It would establish a new, temporary Federal program providing three tiers of extended unemployment benefits. This complex, cumbersome system could slow reemployment and would result in benefit delays, payment inaccuracies, and escalating administrative costs. Moreover, the bill inappropriately abandons the measure of unemployment that has historically been used to trigger extended benefits, substituting an overly broad measure that is not based upon the target group—insured workers.

The Administration will continue to support alternative legislation that effectively addresses the needs of the unemployed while also maintaining the budget discipline that is imperative to the prospects of future employment and economic growth.

GEORGE BUSH.
THE WHITE HOUSE, *October 11, 1991.*

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is now recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, following the period for morning business, the Senate will return to executive session to resume consideration of the nomination of Judge Thomas. Consideration of the nomination will continue until 12:30 p.m., when the Senate will recess for the party conferences. Upon reconven-

ing at 2:15 p.m. today, the debate will resume on the Thomas nomination and continue until 6 p.m., at which time the Senate will vote on that nomination.

THE JOURNAL

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

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

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I ask unanimous consent that the remainder of my leader time and all of the leader time of the distinguished Republican leader is reserved.

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

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

The Chair recognizes the majority leader.

LEAKS

Mr. MITCHELL. Mr. President, at 6 o'clock tonight, the Senate will vote on the nomination of Judge Clarence Thomas to the position of Associate Justice of the Supreme Court.

That vote will end a difficult and controversial process.

Later today, I will announce how I intend to vote and give the reasons for my decision. I will also comment on several aspects of the confirmation process which I believe require our attention and concern.

But this morning I want to address just one aspect of this matter, one that is important to me and should be important to the Senate. That is the subject of leaks.

It has been alleged that confidential information was leaked to the press. I do not know what happened. But I am going to try to find out. And if I can determine the identity of the person who did it, I am going to try to see that the person is appropriately punished.

I want it to be clear on the record that leaks are very much the exception here. Most Senators have not and do not engage in such practices. The Intelligence Committee, the Armed Services Committee, and other committees regularly—indeed, on an almost daily basis—receive and maintain a great deal of classified and highly sensitive information.

We are dealing here with the exception, not the rule. But because it is so important, we must try to eliminate even the exception.

Since I became majority leader, I have repeatedly condemned leaks. I do so again, now. I condemn the unauthorized and inappropriate release of confidential information. It is an inappropriate use of a public position. It should not be and cannot be tolerated or condoned.

I want to make it clear that I am not going to just try to find out how the leak occurred in this case. I am going to try to find out how leaks occurred in other cases where other people were damaged.

That is the crux of the problem. The concern of Senators about leaks has been highly selective. This case makes the point.

There has been much outrage, many emotional words, even a Senate resolution proposed about this leak.

But late last year and early this year, when there were several leaks, the intent of which was to destroy the character and careers of some of our colleagues, those now loudly protesting this leak were silent.

When I stood here on the Senate floor to protest those leaks, those now most loudly protesting this leak were not here. They were silent.

That is why the leaking continues. It continues because most Senators only get upset when the leak harms someone they care about, or some cause they favor. When the leak harms someone they do not care about, or some cause they do not favor, they are silent.

But everyone must understand that to selectively condemn leaks is, in reality, to selectively encourage them. Most of the Senate staff are perceptive and intelligent and honorable people. If they know that their Senator only gets upset about leaks that harm someone or something the Senator favors, there is no restraint upon their leaking if it harms someone or something the Senator does not favor.

Let us be clear about that. The staff acts as the Senator acts, or as they believe the Senator wants them to act.

There is only one answer. We must condemn all unauthorized and improper disclosure of information. All, not some. Those which help our cause, not just those which hurt our cause.

For years, I have had in effect in my office a clear and simple policy. If any member of my staff improperly discloses information, that person will be discharged immediately. No ifs, ands, or buts. No mitigating circumstances. No appeal possible. If you leak, for any reason, you are out. Period.

As a result of that policy, there has never been a leak from my office. Indeed, there has never even been an allegation or suggestion of a leak from my office. I urge each of my colleagues to adopt and enforce such a policy.

Now, we must recognize that no matter how effective we may be, we are not going to stop all leaks in Government. The reality is, of course, that most leaks come out of the executive branch of Government, not the legislative. The executive branch, not the legislative, determines the classification of most Government documents and information. Simply put, in the vast majority of cases, the administration decides what is or is not secret and then is the source of those secrets which are leaked.

Just recently, for example, there was published a book entitled "The Commanders." It describes in great detail the events leading up to the gulf war. It includes much information that is highly classified and other information that is extremely sensitive, most of which obviously came from sources in the Department of the Defense. To this day, the President has not condemned those leaks and no one in his administration has even tried to investigate them. The reason is obvious. The administration is not about to investigate leaks from within the administration itself which likely involve senior executive branch officials.

But none of that excuses or justifies leaks here. We have our own responsibilities and we ought to have and maintain our own high standards, regardless of what anyone else does or does not do.

We all hope some good will come out of this controversial nomination process. One good thing might be the related recognition by all Senators that this is a matter that should and does concern them. I hope I can count on my colleagues' support in the days ahead as I attempt to deal with this matter.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the time for debate between 10:30 a.m. and 5:30 p.m. be equally divided and controlled in the usual form; and that the time from 5:30 p.m. to 5:45 p.m. be under the control of the Republican leader; and the time from 5:45 p.m. to 6 p.m. be under my control.

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

LEAKS

Mr. DOLE. Mr. President, if the majority leader will yield just very briefly, I know there are other speakers here. I just want to indicate I heard his statement with reference to leaks and I offer my willingness to cooperate. I do not think we are ever going to stop leaks, but we could probably make a better effort and I am certainly willing to cooperate, regardless of where they come from. I have pretty much the same policy the majority leader has in

my office. And I think we can stop this if we want to, but it has to be everyone.

I thank the majority leader.

Mr. MITCHELL. Mr. President, it is my intention to meet with the distinguished Republican leader and other Senators to discuss the best way to proceed to deal with the matter. I have not made a final decision in that regard because I want to hear from other Senators. But I want to assure the Members of the Senate that I am serious about this and we are going to try to do something about it. I thank my colleague for his statement.

Mr. EXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Nebraska—Montana.

Mr. BAUCUS. Mr. President, I think the "Senator from Nebraska" was correct.

The ACTING PRESIDENT pro tempore. I am sorry, it was the Senator from Nebraska who asked recognition? And the Senator from Montana?

Mr. EXON. Mr. President, the Senator from Nebraska has remarks that will take about 12 minutes to deliver. There are other people on the floor who are obviously ready to talk. I would yield. I just advise the Chair that, upon the conclusion of what I suspect will be 5-minute remarks from those on the floor at this time, I will seek unanimous consent that I be allowed to talk for 12 minutes. But I suspect my other colleagues are not going to take that long, so I will seek recognition at an appropriate time for a 12-minute period for the Senator from Nebraska.

The ACTING PRESIDENT pro tempore. Who seeks recognition? The Senator from Illinois.

Mr. DIXON. Mr. President, I suspect my distinguished friend from Nebraska is on the floor for the same purpose this Senator is on the floor. I had intended to indicate my position on Judge Thomas. However, I see others on the floor, and it is morning business.

I would be included to yield to others until such time as other subject matter is exhausted and we get on to the business of Judge Thomas, and then I would yield to my friend from Nebraska, who had announced he had sought recognition prior to me, if that is satisfactory.

The ACTING PRESIDENT pro tempore. Chair recognizes the Senator from Montana.

Mr. BAUCUS. Mr. President, I appreciate the comments of the Senator from Illinois and the Senator from Nebraska. I do have a statement on another subject. I think it would be appropriate to speak on this matter in morning business.

Mr. DOMENICI. Mr. President, I wonder if at this time the Senator might yield 30 seconds to the Senator from New Mexico on the subject that the majority leader spoke of?

Mr. BAUCUS. Mr. President, I yield to the Senator from New Mexico 30 seconds.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

LEAKS

Mr. DOMENICI. Mr. President, the night we left the Senate for recess, I indicated that the Senate was in serious trouble if we did not find a way to go after, locate, and deal with whoever breached the confidentiality in this pending matter. I heard the majority leader today indicate that this is extremely important, and then commit to the Senate that he will use his good offices to try to get to the bottom of that issue.

I want to thank him for that. I think it is absolutely important. The breach of confidences that occurred in the pending matter cannot continue. We will have an Attorney General up here for confirmation. We just cannot retain public support and do our business in that manner.

I thank the Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

CHINA SECTION 301

Mr. BAUCUS. Mr. President, I rise to congratulate the administration on its decision to initiate a section 301 investigation of China's trade barriers.

Initiating the case is one of the steps the administration pledged to take in return for Congress extending most-favored-nation [MFN] status to China.

CHINA'S TRADE BARRIERS

This action against China's trade barriers is overdue. Over the last 4 years, China has steadily raised its trade barriers.

United States exports to China today are blocked by a web of trade barriers, including import licenses, import bans, discriminatory testing requirements, import surcharges. Taken together, these barriers may be blocking as much as several billion dollars in American exports annually.

China may now be the most protectionist major country in the world.

In addition to blocking United States exports, China has systematically pirated United States intellectual property. This piracy results in the loss of hundreds of millions of dollars in U.S. exports annually.

As China's trade barriers have risen, so has the United States trade deficit with China.

In 1990, the United States trade deficit with China hit $10.4 billion—up $4.2 billion from 1989.

At a time such as this, when the United States trade deficit with all other major trading partners is shrinking, the deficit with China threatens to reach $12 to $15 billion. If these estimates prove correct, the United States bilateral deficit with China in 1991 will be second only to the deficit with Japan.

INITIATION OF SECTION 301

Though I share their outrage with Chinese trade barriers, I argued against some of my colleagues' efforts to withdraw MFN status from China in response to the trade barriers.

I opposed using MFN in this way because we have worked for many years to develop a trade law—known as section 301—tailored to respond to foreign trade barriers.

By initiating action under section 301, the administration has responded appropriately to Chinese trade barriers.

The initiation of a section 301 case today is followed by a 12-month period for negotiations. Unless China agrees to remove its trade barriers within 12 months, it would face United States trade retaliation.

The case initiated today against China is one of the largest initiated under section 301. It addresses all of the major Chinese trade barriers and could ultimately involve billions of dollars in United States exports annually.

Hopefully, this case will convince China to open its market.

CHINA'S REACTION

If it hopes to maintain a trading relationship with the United States, China must recognize that trade is a two-way street. It cannot continue to export billions of dollars in Chinese products to the United States and keep its home market tightly closed to U.S. exports. By resorting to protectionism, China undermines its case for continued MFN treatment from the United States. Every time China erects a new trade barrier or otherwise cancels a purchase from the United States, it increases the probability that the United States Congress will ultimately decide to cut-off MFN.

Particularly now, with a series of unfair trade actions pending, China must demonstrate good faith if it expects the trading relationship with the United States to continue.

THE ADMINISTRATION'S CREDIBILITY ON CHINA

By initiating section 301 action, the Bush administration has boosted the credibility of its China policy.

In addition, the United States Customs Service recently made a series of raids on illegally shipped Chinese textiles.

Belatedly, the Customs Service also began action against goods imported from China that are made by prison laborers in violation of U.S. law. I understand further steps are planned to exclude imports of goods made with prison labor.

But the administration must also demonstrate progress on other fronts.

Congress wants to see progress on issues such as respect for human rights and nuclear proliferation as well as trade.

Even on the trade front, some important steps remain to be taken. On November 26, a retaliation deadline for another unfair trade case against China will be reached. This case is directed at ending Chinese piracy of United States intellectual property. Hopefully, progress can be made with China on this issue to make retaliation unnecessary.

But unless substantial progress is made by November 26, I expect the administration to retaliate against Chinese exports as required under the law.

Further, the administration still has not fulfilled its pledge to actively support Taiwan's GATT application.

CONCLUSION

The steps the administration has taken to address Chinese trade practices demonstrate that it is willing to follow through on its policy of prodding China to reform while engaging China with MFN. For the time being, Congress should give the policy a chance to work and put legislation to condition or deny MFN to China on hold.

But China should recognize that Congress' patience is limited. Unless China undertakes reforms in a number of areas, it will eventually lose MFN.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask unanimous consent that I may be allowed to proceed in morning business for not to exceed 12 minutes.

Mr. DIXON. Mr. President, I will not object, and I do not object, but may I observe that the request of the distinguished senior Senator from Nebraska will take us out of morning business. I have no problem at all with that. I see no other Senators on the floor, but I would like the Chair to know that thereafter, I will announce my position on the Thomas nomination. So I have no objection at all to the request of the Senator from Nebraska.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. EXON. Mr. President, to maybe clear up the matter right now, I ask unanimous consent that the Senator from Nebraska be recognized for not to exceed 12 minutes, and following that, the Senator from Illinois be recognized for 10 minutes, notwithstanding the other orders before the body that have been previously agreed to.

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

THE CONFIRMATION OF JUDGE CLARENCE THOMAS

Mr. EXON. Mr. President, first let me express a brief history of the recent developments of this one Senator and the part that I played in a matter of the confirmation of Judge Clarence Thomas to the Supreme Court.

On Friday, October 4, before I ever heard of Prof. Anita Hill, I addressed this body in support of the nominee. At that time the Judiciary Committee had completed its hearing and forwarded its written findings on the nominee to the Senate without recommendation. My support was based upon my assessment of the facts at hand and my personal conservations with the nominee.

Three days later on Monday, October 7, after revelations of that weekend, I was back on the floor suggesting a 1-week delay in the scheduled vote, to give the committee additional time to delve into the serious charges that had been leveled against Judge Thomas by Professor Hill. That delay came to pass.

It was a wise decision from the standpoint of fairness to all, including the nominee, his accuser and the obligation of the Senate to more thoroughly investigate. Judge Thomas along with others eventually came to the same conclusion.

As a result of those extended hearings some startling but not surprising charges and countercharges were leveled. No one expected it would be a picnic but, weather notwithstanding, all were expected to attend. A good time by all was not in the offing because unpleasantness was a foregone conclusion.

There has been a legitimate cry nationwide for a revelation and determination of the facts and the truth. That is a logical and reasonable request but obviously oversimplified. Some have even gone so far to maintain that Thomas should be confirmed, because otherwise it would set a precedent that might prevent any qualified person from seeking high appointive positions in Government. Such reasoning or lack thereof, shreds the Constitution and lets King George do it as per pre-Revolutionary War days.

After carefully listening to both Thomas and Hill, this one member of the eventual jury of 100 feels both appear believable, but one seemingly is lying under oath, a criminal offense of perjury. Unfortunately, after the hearing, it is difficult, if not impossible for me to determine what the facts or truths are. I suspect that this might be the opinion of many who listened to the recently concluded hearings.

Last week during the hearing, I was disturbed about reported statements made by some of the Thomas supporters that if anyone testified against the nominee that witness would, in effect, have their heads served to them on a platter during the deliberations.

Likewise, I was disturbed by some information reaching me that some Hill supporters felt that unless Thomas was rejected, it would be the equivalent of condoning sexual harassment of women.

The President has said as recently as Sunday that the charges against the nominee are ridiculous and that the process is ridiculous. This, Mr. President, from the man who from the beginning started the process with the ridiculous statements that his nominee was selected strictly because he was the best qualified individual in all of America and that the decision was devoid of any and all political or racial considerations. I clearly referenced my views of the President in this regard in my speech to the Senate of October 4. Ridiculous statements in all of this began with the President. Is it any wonder that the Nation is embroiled in this bitter controversy over ridiculous statements and conclusions magnified by the President's latest pronouncement from the golf course? You will forgive me if I employ my constitutional right to criticize King George.

Those whom I customarily turn to for advice on such important matters are deeply divided. My constituents, my family, my closest friends and even my staff are unbelievably split. Emotions are running amuck and from every direction more so that I can recall previously from over 20 years of public service. The boat of discussion and decisionmaking has been so violently rocked that the rudder has been out of the water so often it is difficult to steer any sound course to sound determination.

Both of the principals in the controversy have been hurt and I feel deeply and personally for both. Judge Thomas was forthright in his denial and that impressed me. Professor Hill was equally forthright in what I interpreted as a difficult disclosure on her part. If her detailed statements of alleged sexual harassment are accurate, it does not take just a woman to understand her anguish. Indeed, regardless of the eventual outcome of this matter, the controversy has clearly been beneficial in its significant contributions to necessary changes and understanding in the workplace.

Unfortunately, in my view, the hearings of the past few days have not produced any overall conclusive facts or definitive truths on the charges by Hill or the firm denials by Thomas.

The key and central issue here though is not what is in the best interests of either of the two antagonists. We cannot ignore what is fair or not fair to the individuals, nor the harm to either that our eventual decision will bring. But even more important than that is how our decision will affect the future. To assail the process or attempt to punish individuals or institutions which one might conclude in retrospect should have acted differently evades and tends to place out of focus the real object of the process, as painful as it is for all.

We must concentrate now on the all-encompassing issue as to whether or not Clarence Thomas should be confirmed for a lifetime appointment to the highest court in the land. On October 4, I supported the nomination on the floor on the basis of my knowledge at that time. Among other things I stated that I felt Judge Thomas met the test of judicial temperament.

Notwithstanding my appreciation of the nominee's rage at the allegations, I was surprised and disappointed at many of his statements. They were not made in a fit of instantaneous anger but rather well thought out and premeditated remarks. He said that he would have rather felt an assassin's bullet than go through the humiliating process; that he would rather die than withdraw his nomination; that the Senate had ruined his life and reputation; that the Senate hearing had been conducted in a manner equivalent to that of a lynch mob; that the process was ridiculous and like a circus. Those were phrases well orchestrated and employed by Thomas supporters. Such comments by the nominee, even under the circumstances, were at best overstatements. On the other hand, I have not been particularly impressed with the reasons advanced by Professor Hill as to how she could have brought herself to follow Judge Thomas so faithfully and for so long in her career given the sordid remarks allegedly made to her. I can understand her reluctance to make a formal complaint at the time and her not telling any or all of the vast array of Thomas supporting witnesses who seemed to be saying in testimony she should have confided in them. It seems to me such would have likely been promptly reported to Thomas which would not have been in her interests at that time.

Yet I cannot readily understand why a person with her talents would not have conveniently found for herself a more satisfying position and superior, quietly, if that were her wishes.

But now, Mr. President, it is decisionmaking time, and we cannot punt.

In conclusion, I have deliberated over this position and studied it for hours and hours, for days. There have been swings, pro and con, as I watched the hearings for solid conclusions that never materialized. Unlike some might believe, there has been no pressure on me from any source other than my determination to do what was best and right under the circumstances.

There has developed in my mind no clear-cut correct choice, more a mixture of concerns and doubts. How best do we conclude this whole unhappy chapter?

Notwithstanding my reservations as to the nominee, I intend to vote for confirmation but without enthusiasm. It is my hope that, if confirmed, Judge Thomas will be a better Justice because of this ordeal.

It is my belief that he will not turn out to be the doctrinaire idealog on the Court, as he is projected.

We badly need some overall balance there. If confirmed, Judge Thomas has the roots and earlier experiences to provide that. Time will tell.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The time of the Senator from Nebraska has expired.

THE DEDICATION OF THE NATIONAL LAW ENFORCEMENT MEMORIAL

Mr. PELL. Mr. President, as honorary chairman of the National Law Enforcement Memorial Fund, it is a great pleasure for me to be able to call to the attention of the Senate today's dedication of the National Law Enforcement Memorial at Judiciary Square in downtown Washington, DC.

I became involved in this project through the efforts of my friend Ray Pezzullo and the Rhode Island Fraternal Order of Police, of which he was the President. At their urging, I introduced the original legislation, later signed into law by President Reagan, that established the memorial fund. It is a tribute to Ray and other early advocates of this project that we celebrate the dedication of this memorial today.

The dedication ceremony was attended by President Bush who has been a steady supporter of the memorial campaign from its inception.

Those of us who have watched the progress of this memorial are all truly impressed with what we saw today. It is a design that we can all be proud of and, most importantly, it is a design which will be a source of pride and comfort for the families and friends of those law enforcement officers who gave their lives in the line of duty.

We should not forget that the law enforcement community is made up of people. This memorial acknowledges the human side of law enforcement, a side that needs and deserves to be recognized and remembered. The memorial is a reminder that law enforcement depends finally on the men and women who work every day to uphold the law.

The establishment of this memorial has been aided immensely by the hard work of Craig Floyd, the chairman of the Law Enforcement Memorial Fund, along with his staff and advisers. The memorial campaign has also benefited from the participation of its board of directors, which includes the Concerns of Police Survivors, the Fraternal Order of Police, and their president, Dewey Stokes, and the International Association of Police Chiefs.

A very great debt of thanks is owed also to the various Federal law enforcement agencies that have supported this effort including the Attorney General's Office, the FBI, DEA, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, and Firearms.

I am thankful for this opportunity to have served this cause and look forward to continued efforts on behalf of America's law enforcement community.

TRIBUTE TO RUTH TAYLOR

Mr. BURDICK. Mr. President, I note with sadness the recent passing of Ruth Taylor. I knew Ruth through her job as executive secretary to the last three directors of the AFL–CIO's committee on political education: Jim McDevitt, Al Barkan, and John Perkins. She impressed me as not only friendly and helpful, but as a committed worker for the cause of working people across America.

Ruth Taylor was an outstanding secretary with an exceptional devotion to her job. She joined the American Federation of Labor in 1948 as a secretary in its Labor League for Political Education. She joined COPE when it was formed by the merger between the CIO and AFL. She retired in 1989 after 41 years in the labor movement.

Far too often, secretaries do not get the recognition they deserve. In paying tribute of Ruth Taylor today, I pay respect to all the skilled secretaries across America.

THE BELLAGIO DECLARATION OF PRINCIPLES ON THE ENVIRONMENT

Mr. KENNEDY. Mr. President, an important conference on the environment took place at Bellagio, Italy, last August. It was cochaired by my constituent and long-time friend, Charles M. Haar, Brandeis professor of law at Harvard University on behalf of the American Academy of Arts and Sciences, and by Oleg Kolbasov of the Academy of Sciences of the U.S.S.R.

As a result of the conference, significant progress has been made toward future international collaboration in dealing with the common worldwide challenge of implementing sound environmental policies. Since the environment of our planet recognizes no political boundaries, the world community needs to join together in effective ways to address these serious concerns.

An immediate positive outcome of the conference is the Bellagio Declaration of Principles. I believe that the declaration will be of interest to all of us in Congress concerned with these issues, and I ask unanimous consent that the declaration and a list of participants in the conference may be printed in the RECORD.

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

THE BELLAGIO DECLARATION ON THE ENVIRONMENT

As environmental policymakers, lawyers, economists, educators, and elected and appointed officials from the U.S. and the

U.S.S.R., meeting in Bellagio, Italy from August 5 to August 9, 1991;

Reaffirming the fundamental right of people to live in a safe and healthful environment;

Recognizing that enduring prosperity requires the protection of health and safety, as well as the integrity of natural systems;

Convinced that present threats to the environment require concerted actions of different governments throughout the world;

Persuaded that informal meetings of environmental experts can contribute to the attainment of the goals of the 1992 United Nations Conference on Environment and Development,

We reached a consensus on the following principles:

1. Governments should identify and implement ways in which economic development goals can be achieved consistent with a safe and healthful environment and with sound use of natural resources.

2. Environmental protection deserves distinct representation at the highest ministerial or cabinet level of government.

3. Each level of government should perform those tasks to which it is best suited for the protection of the environment, and should formulate and implement appropriate programs to accomplish those tasks.

4. Environmental policy should be integrated with land use and natural resource planning, regulation, and implementation, as well as with the policies of other government agencies whose actions affect the environment.

5. A free market, together with government measures that address its failures through prevention, correction, and consideration of environmental problems, is well suited to provide the resources for achieving a safe and healthful environment.

6. Environmental goals should be achieved by an optimal combination of administrative controls and market mechanisms to comply with environmental standards in the most cost-effective manner and to encourage the development of environmentally superior technologies.

7. Public and private decisionmakers should recognize environmental management as among the highest priorities and establish policies for conducting operations in an environmentally sound manner.

8. Decisions over where to locate environmentally undesirable land uses should consider their impact on surrounding areas and strive for an equitable distribution of such uses throughout the region.

9. Government should require periodic public reporting on the nature and quantities of pollutants released into the environment.

10. Government should collect and maintain full and accurate environmental information necessary for the formulation and implementation of environmental policy, and citizens and public officials should have appropriate access to such information.

11. Citizens should have the right to participate in the government's environmental decisionmaking process.

12. Individual citizens and groups affected by an environmental decision and responsible government officials should be able to petition a court to interpret and enforce the environmental laws and to overturn actions taken in violation of such laws.

13. Public and private institutions should undertake educational programs designed to increase public understanding of environmental problems and to encourage public responsibility for their solution.

14. International standards should be developed and adopted for measuring and monitoring environmental quality, in order to facilitate coordination of national environmental activities.

15. To protect the environment and promote settlement of international disputes, countries should agree to resort to arbitration and, if appropriate, to an international environmental tribunal.

To advance the foregoing principles, we have agreed to meet from time to time and review progress in achieving their implementation.

BELLAGIO, ITALY, *August 8, 1991.*

U.S.–U.S.S.R. ENVIRONMENTAL PROTECTION INSTITUTIONS, AUGUST 5–9, 1991

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THE 1991 NOBEL PEACE PRIZE

Mr. KENNEDY. Mr. President, I am pleased that the Nobel Committee has selected Aung San Suu Kyi, the courageous and inspirational leader of Burma's democracy movement, to receive the 1991 Nobel Peace Prize.

Three years ago, when Aung San Suu Kyi and millions of other Burmese citizens peacefully marched in Rangoon, Mandalay, and other Burmese cities to demand an end to the 26-year military dictatorship of Gen. Ne Win, the government responded by massacring 10,000 unarmed citizens. Aung San Suu Kyi was placed under house arrest, cut off from all outside communication, including her husband and two children, and denounced by the military junta as a subversive.

In May 1990, in response to domestic and international pressure, the military held elections without releasing Aung San Suu Kyi from house arrest. To the government's surprise, she and her opposition party soundly defeated the military, and won the vast majority of legislative seats. The government promptly invalidated the election and stepped up its repression of advocates of democracy.

Although the military junta has offered to free Aung San Suu Kyi in exchange for her agreement to leave the country, she has refused to accept such an arrangement until authorities have freed all political prisoners and turned over the government to civilians. In one of her last essays before being subjected to incommunicado detention, she wrote that "[a]s long as there are governments whose authority is founded on coercion rather than the mandate of the people * * * victims of repression [will] have to draw on their own inner resources to defend their inalienable rights as members of the human family."

Aung San Suu Kyi's unwavering commitment to nonviolence as a means of achieving democracy serves as an inspiration to all people who suffer repression and the denial of basic human rights. Her selection as a Nobel Laureate is well-deserved. She is a vivid symbol of the desire for democracy and human rights in the hearts of the Burmese people.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,404th day that Terry Anderson has been held captive in Lebanon.

Yesterday, the New York Times published an article addressing the Tehran Times' report that a Western hostage held in Lebanon will soon be released. Mr. President, I ask unanimous consent that this 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:

[From the New York Times, Oct. 14, 1991]

IRANIANS PREDICT A HOSTAGE RELEASE

NICOSIA, CYPRUS, October 13.—An influential Iranian newspaper announced today that a Western hostage in Lebanon, possibly an American, might be freed soon. The report was published as a United Nations envoy began a new mission seeking the hostages' release.

The English-language Teheran Times did not specify which hostage might be freed by pro-Iranian extremists in Lebanon, nor did it give a date for a release.

The paper, which often reflects the positions of President Hashemi Rafsanjani of Iran, accurately predicted two earlier releases of hostages.

But it incorrectly reported that an American might be set free shortly after the release of a Briton, Jack Mann, on Sept. 24.

The article, an interview with one of the paper's Lebanon correspondents, said a fundamentalist Shiite Muslim group, the Party of God, was pushing for a release on humanitarian grounds despite what it called Israel's intransigence in releasing Arab prisoners.

"MAYBE AN AMERICAN"

"I'm more optimistic than at any time before that one Western hostage, maybe an American, will be freed," the newspaper quoted its unidentified correspondent as saying.

"Maybe one American will go home soon if no unforeseen incidents take place as happened earlier," the correspondent was quoted as saying. But he added, "The slightest mistake or provocative statement from any side" could mar efforts by the United Nations and the Iranian Government to free the hostages. The newspaper did not elaborate.

The Party of God, considered to be the umbrella group for the Shiite extremists who are believed to be holding most of the hostages, has linked freedom for the nine Western captives to Israel's release of up to 300 Lebanese Arabs held by Israel or its allied militia in southern Lebanon.

Israel has insisted on receiving information on five Israeli servicemen missing in Lebanon before it releases any more Arab prisoners.

The Iranian report was published on the same day that the special United Nations envoy in hostage negotiations, Giandomenico Picco, arrived in Cyprus on his way to Damascus, Syria.

He refused to comment on his mission, but officials at United Nations headquarters in New York said Mr. Picco was trying to further Secretary General Javier Pérez de Cuéllar's intensified efforts to obtain the release of all hostages and detainees.

NATIONAL SCHOOL LUNCH WEEK

Mr. DOLE. Mr. President, as a longtime member and former chairman of the Senate Subcommittee on Nutrition, I am pleased to join in this week's commemoration of "National School Lunch Week." The National School Lunch Program is our oldest and largest Federal Nutrition Program, serving some 24 million children balanced meals every school day. Sadly for many children, school lunches are the only nutritious meals they get during the week. For all the children who participate, the School Lunch Program helps provide the energy and nutrients they need to get the most out of their school day.

Mr. President, I'd like to use this opportunity to highlight a few of the innovative school food service projects under way in my own State of Kansas. In the Seaman School District in Topeka, Kansas, parents and students receive information on the nutrient content of the foods served in the School Lunch Program. Students in Great Bend schools help plan 95 percent of the menus served in the district as part of the Nutrition Education Program implemented by the District's School Food Service Director. Teachers, parents, and students in Salina schools are participating in a new "snack shack" program to learn about quick and easy nutritious snacks they can prepare after school and for school parties. And in the Shawnee Mission Schools, a flyer is sent to parents early in the school year advising them, among other things, of the availability of modified meals for children with special dietary needs.

I want to extend my thanks to all the food service professionals in Kansas and across the Nation who dedicate themselves to providing school meals. They make an invaluable contribution to the health and well-being of our Nation's children, and they deserve our appreciation and recognition during this special week.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session and resume consideration of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Illinois.

Mr. DIXON. Mr. President, on Tuesday, October 1, I announced my intention to vote for the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. I based my decision on a careful review of the nominee's intellectual capacity, his background and training, and his integrity and reputation.

Five days later, two days before the entire Senate was scheduled to vote on the Thomas nomination, the country was shaken by an allegation of sexual harassment that was leaked from the Judiciary Committee. Regrettably, prior to that time, no Senators outside of the Judiciary Committee, with the possible exception of the majority and minority leaders, had been informed of the allegations.

At that point, the Senate only had one real choice—to delay the vote on the nomination that had been scheduled for last Tuesday in order to provide an opportunity for a fuller investigation of the sexual harassment issue. I was among the first to call for such a delay; it would have been unconscionable for the Senate to have voted without thoroughly reviewing such a serious matter.

Last Friday, the Judiciary Committee began what became 3 long days of public hearings. For those 3 days, the Nation became riveted on the testimony of Judge Thomas, Professor Hill, and the other witnesses, and transfixed on an issue—workplace sexual harassment.

I condemn in the strongest way, as I have throughout my career, any type of sexual harassment. The last week has been a kind of national tragedy, but if the result is that the country becomes more sensitive to sexual harassment, then the dark clouds will have had a valuable silver lining.

Today's vote is not a referendum on sexual harassment; if it were, I would hope and expect the vote in the Senate to be unanimous against it. Today's vote is also not a referendum on the nomination process. If it were, I think the vote would be unanimous that the process has swung out of control, and that it reflects poorly on the Senate.

What today's vote is about is whether Judge Clarence Thomas deserves appointment to the Supreme Court. Part of that calculation now involves the question of whether Judge Thomas sexually harassed Prof. Anita Hill when they worked together at the Education Department and the Equal Employment Opportunity Commission.

The Judiciary Committee tried its best over the weekend to get to the truth of the matter. The unfortunate fact is, however, that Senate hearings are ill-suited to determine the true facts in situations like this one.

Like most Americans, I spent a lot of time watching the hearings. I spent a lot of my career as a trial lawyer. I have seen a lot of witnesses.

What I saw last weekend was two convincing witnesses. Professor Hill's testimony was moving and credible. Judge Thomas' denial was forceful and equally credible. So what should the Senate do?

Make no mistake. In the view of this Senator, at least, a charge of sexual harassment, if proven, disqualifies any nominee for a position on the U.S. Supreme Court.

If Professor Hill had been credible, and Judge Thomas had not, the Senate's decision would be simple. If Judge Thomas had been credible, and Professor Hill had not, the Senate's choice would be equally clear. Since both were credible, however, and since it is impossible to get to the bottom of this matter, I think we have to fall back on

our legal system and its presumption of innocence for those accused.

Under our system, the burden falls on those making allegations. Under our system, the person being accused gets the benefit of the doubt. That is not a legal loophole; it is a basic, essential, right of every American. If we are not to become a country where being charged is equivalent to being found guilty, we must preserve and we must protect that presumption.

In this case, that means Judge Thomas is entitled to a presumption of innocence.

Since the Judiciary Committee hearings did not overcome that presumption, that means Professor Hill's allegations cannot be used to justify a vote against Judge Thomas. A decision on this nomination cannot be made on sexual harassment grounds; instead, it must be made on the issues that have been before the Senate for the past 100 days and more.

I will therefore cast my vote as I had announced on October 1 for the confirmation of Judge Clarence Thomas.

I yield the floor.

Mr. BIDEN. Mr. President, I must ask. The time is equally divided between the proponents and the opponents of this nomination. I am under the impression that the senior Republican on the floor when Senator THURMOND is not here will control the time, and the senior Democrat on the floor when I am not here will control time. Is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BIDEN. Mr. President, I will have much more to say today——

Mr. THURMOND. Mr. President, may I propound a question to the distinguished chairman?

Mr. BIDEN. Sure.

Mr. THURMOND. Mr. President, as I understand, the time will be equally divided between the pro and con. Is that correct?

Mr. BIDEN. That is correct.

Mr. THURMOND. They can alternate if they want to, but that is not what is counted. The time each side uses is what will really be counted.

Mr. BIDEN. That is correct.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, I will have much to say before the discussion of this nomination passes from public debate, which will be some time from now.

Today, I expect we are going to hear a great deal about how the process does not work. There is a good deal that can be said about the process working and not working, and that is what I want to address now.

There is also the temptation—when one does not want to take a firm position on the hard subject of whether or not Anita Hill is telling the truth, or the nominee is telling the truth—and it is always safe to attack the Senate. I understand that there is refuge in that, and I understand the political motivation behind such attacks. But this is a very, very serious question as to whether, and if, the process is not working, and if so, how to fix it. And notwithstanding what I suspect I am going to hear today about the Senate and the process, I will resist responding in giving my views for two reasons. One, I think it warrants a very thorough, thoughtful, and precise discussion, which time constraints forbid; and second, I would respectfully suggest is not likely to be able to occur on the floor today and in this environment.

The issue here today is whether or not to confirm a nominee to become an Associate Justice of the Supreme Court of the United States for the rest of his life.

We will hear discussion today, I suspect, about whether or not 100 days is an inordinate amount of time to have this nomination under consideration.

I would point out that if we confirm this nominee, we are talking about 15,000 days—15,000 days—that he will be making decisions that will affect our lives.

So I hope as we discuss this issue we will have the intellectual integrity to speak to the issue at hand, and that is: Should Clarence Thomas be confirmed to be an Associate Justice of the Supreme Court?

Many of us in the committee and out of the committee have already taken positions unrelated to having anything to do with the subject, the specific subject, of the hearings this past weekend.

My view is that Clarence Thomas should not be an Associate Justice of the Supreme Court because the views which Clarence Thomas has on matters of consequence that will shape the future of this Nation are significantly different than ones that I hold, and I believe are significantly different than ones that have been espoused by the Court for the past 40 years in the areas of separation of power, in the areas of the relative weight, the relative strength, the relative protection given to property and personal rights and privacy.

I think that is the legitimate forum within which we should debate whether or not a woman or man should become an Associate Justice of the Supreme Court.

Much of what has happened in the process, Mr. President, is totally beyond the control of the U.S. Senate. We cannot affect whether a rightwing group or a leftwing group, an interest group runs ads that are not true on television; or that is something I have absolutely no impact on. I cannot affect that. The Constitution prevents the Government from affecting that. Whether or not a member of my committee or their staff engages in unethical conduct and releases a confidential memoranda addressed to me by a witness is something I cannot absolutely prevent or control.

Within the rules, one who engages in unethical conduct, must be exposed and then reprimanded, if they can be found out. I can say without any fear of contradiction that there is not a person in this body who has a stronger desire and a keener interest in unearthing the unethical individual or individuals than do I.

But that is not the process' fault, Mr. President, any more than the process of the Presidency does not function because we have had unethical Presidents.

Mr. President, so much is beyond the control of this body that, understandably, in the concern that has been evidenced by something that the public cannot—nor can I—fully fathom happening, having happened. If you picked up the paper last week, you read about how horrible it was that the Senate, the Judiciary Committee, proceeded to deal with the Hill charges in private, without a public hearing. Yet some of the same people, writing a week later, now express how horrible it is that the issue was debated under the rules in public.

Human nature is rife with hypocrisy, Mr. President. But it is understandable. Because I know of no system of Government where, when you add the kerosene of sex, the heated flame of race, and the incendiary of television lights, you are not going to have an explosion. I know of no institution that has been created by mankind that can contain that configuration.

To take another example, we are now debating in America the televising of trials that take place in the Federal court system. There is a hue and cry that the public has a right to know, and they do.

There is a strong constitutional argument that would suggest that if press is allowed in to transcribe, why should press not be allowed in to televise? But mark my words, Mr. President, the first time there is a trial about sexual abuse or rape or harassment where, as an element of the crime, the victim is required under the law to explicitly and in detail state what happened, and the television camera broadcasts that across the public medium of television, there will be a hue and cry to close such a trial, because this is a phenomenon we have yet to encounter and resolve as a nation.

It is no one's fault, Mr. President. It is the nature of technology and our fundamental commitment to our Anglo-American notion of jurisprudence, which says that people in criminal cases are innocent until proven guilty beyond a reasonable doubt. And in civil cases, the defendant is given the benefit of the doubt.

That runs head on against the notion of fairness in the context of klieg lights, because it is a truism that any woman or man accused of a crime that is televised, as opposed to it being held in private or in a Senate hearing room, where there was no accusation of a crime or of wrongdoings, even if the person is totally exonerated, their reputation will have been damaged, because a large percentage of the public will say, "Why would they have been accused if they did not do it?"

We all know that in our criminal system the mere bringing of an indictment is just an indictment, even though you and I know that it means nothing under our system of law. It has nothing to do with whether or not a man or a woman is innocent or guilty under our system. They are innocent, notwithstanding the indictment, until they are proven guilty. All the indictment says is that you must come to court and be tried.

But the mere issuing of an indictment in a criminal proceeding—unrelated to the Senate—can ruin a woman's or a man's reputation.

I think that is part of the moral dilemma we are all wrestling with here. No one liked what happened, no matter who is at fault. Assume, for the sake of discussion, that the witness was lying completely; no one still would have liked the proceeding. Assume for the moment that the nominee was lying completely; no one could have enjoyed what has taken place. And the same criticisms would pertain.

Mr. President, we have a serious task, and the task is to decide by this vote that we will cast today, not whether or not Clarence Thomas engaged in sexual harassment, or any conduct unbefitting to a Justice; not whether or not Anita Hill was victimized in any way; but whether or not taking all things into consideration, from the charge to philosophy to judicial temperament—taking everything into consideration—we as an institution, exercising our constitutional responsibility, believe that this man should sit on the Court. This is a vote about the future of America, not just about Clarence Thomas' reputation.

This vote will affect his reputation. If Clarence Thomas were to lose today with 51 votes to 49 votes, the history books would way the reason he lost was because of this. Conversely, if Clarence Thomas wins, the history books will say, I suspect, that Anita Hill was not credible or was less credible.

Mr. President, we are voting the future of the Nation, not just the character of the man. If the character impacts upon the ability of that person to perform his duties, which sexual harassment, in my view, does, so be it.

I have, as we all have, had challenging things to do in my life and I have been confronted by challenging things. And I still am not sure precisely how I am to perform my responsibilities.

On the one hand, as chairman of the committee, I feel it is my absolute obligation to be as fair as humanly possible and have rulings, questions, and statements consistent with that fairness.

But I did not run for the U.S. Senate to become a judge. There are only three things I knew I did not want to be. One was a judge, another was a police officer, and the third was a mayor, because they are all incredibly difficult jobs that I do not feel myself personally suited for based on how I think.

I became a defense attorney instead of a prosecutor because that is where I find more comfort. I am not accusatory by nature. But the job is to try to see to it that justice is done within my limited capabilities as chairman. But all the while, everybody knows, prior to any of this occurring I was against the nomination of Clarence Thomas based on philosophy. And today, I will essentially, until the end of this process, conduct myself in a former capacity as best I can to see to it that everybody has an opportunity to speak because they are all grown people in this body. All the women and men in this body had a chance now to see essentially what all of us saw. They do not need me to tell them. They do not need me to inform them. They do not need me to convince them. Their judgment about the veracity of the witnesses is equally as sound as mine. So I will speak later, much later, about the process.

I thank the Chair for his indulgence, and I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Chair recognizes the Senator from Iowa. Does the Senator from South Carolina yield time?

Mr. THURMOND. Mr. President, I yield 20 minutes to the distinguished Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask that you notify me when 18 minutes have passed.

Mr. President, when I embarked on a career of public service 33 years ago, I think I was then and still am motivated by a desire to be involved in public policy, to strengthen the people of Iowa and their quality of life as well as to help make their great Nation, this great Nation, an even better place to live, work, and to raise our families. Never, Mr. President, could I have imagined that I would have to sit through a spectacle such as the one that we conducted in the Judiciary Committee this weekend. If it had not been for the fairness of the chairman, it probably would have even been more of a spectacle.

This ordeal was, for me and my colleagues, as well as the participants, one of gargantuan proportions. I was troubled, disturbed, and pained going into the hearing. And I was even confused at times during the hearing. But now after it is all over, I have had the chance to observe and to question witnesses and to consider their testimony. So now I would like to deal with some of the allegations brought against Clarence Thomas and his fitness to serve on the Supreme Court.

At the outset, Mr. President, the entire Judiciary Committee operated from the premise that fairness required Anita Hill to prove her allegations. As you know, she accused Judge Thomas of sexual harassment and she had to establish the truthfulness of these charges. Judge Thomas stands accused, but he need not prove his innocence. And to the extent that any of my colleagues find the situation continued to be cloudy, murky, and unclear, Judge Thomas must be given the benefit of the doubt. It is fundamental to our system that any doubts be resolved in favor of the accused. Chairman BIDEN noted this at the beginning of the hearing and he repeated it many times during the hearing. He said that Judge Thomas was entitled to be given the benefit of the doubt. That, Mr. President, was the committee's starting point.

We must take note that this extraordinary hearing resulted from a breakdown in the confirmation process, a leak to the press of a confidential FBI report.

Had this report not become public, the Senate could have handled the matter in confidence. The leak caused irreparable harm to these two individuals, Judge Thomas, and Anita Hill.

The leak was irresponsible, in violation of the Senate rules, and possibly illegal. It was an insult to the many committee members who approached the confirmation process fairly and carefully. And, I find it particularly ironic that in a process designed to find a ninth person to protect the rule of law in this Nation—a ninth person on the Supreme Court—so much disregard for both rules and law was demonstrated. The leak should be investigated and those responsible for it should be punished.

As a result of this leak, the Judiciary Committee was asked to hold hearings to determine whether these allegations had any factual validity. The Senate Judiciary Committee is quite able to investigate legislative facts; information about societal problems and legislation proposed to address them. However, this committee is ill-suited to conduct a trial. Trials are why the judicial branch was created. The American people need to understand that we on the committee cannot make a conclusive determination as to whether or not Professor Hill's allegations are true.

Professor Hill had recourse for deciding whether these allegations were

meritorious—sex harassment is a serious charge and there are remedies for it. It is offensive, intolerable conduct which requires immediate corrective action. Under title VII, a Federal employee has 30 days in which to file a charge of employment discrimination, including sexual harassment.

If Professor Hill was not satisfied with the administrative determination, she could have sued in Federal court. But make no mistake, Professor Hill had a place to go 10 years ago when the harassment she asserts took place.

So what in fact did happen? We will probably never know all the facts. But this was high drama—from the perspective of this Senator from Iowa—this, at times, resembled a soap opera about the elite and aspiring power brokers of Washington, DC. There was plenty of talk about Yale Law School, establishment law firms, and moving up on the political ladder.

But as I considered all of the testimony—much of it was extremely offensive and difficult for me to endure—I have to conclude that, in spite of her sincerity, confidence, and apparent credibility, Professor Hill's story just does not add up. Let me explain the reasons for my conclusion.

Professor Hill's testimony was filled with inconsistencies. Frankly, I was left with more questions after the hearing than before.

For example, why did she follow Judge Thomas from the Department of Education to the EEOC if he had harassed her in the horribly offensive fashion that she claims? And, why did she not even explore her options for remaining at the Department of Education? After all she was a civil service employee, not a political hire. And, why did she make at least 11 phone calls to Judge Thomas between 1983 and 1987, after she left Washington? Why did she want to, in her words, keep up a cordial and professional relationship with a man she says tormented her?

And then, there is the substance of the allegations. As I saw it, Professor Hill had three different stories about the harassment she suffered. First, there was the harassment she told her friends at the time it occurred. To these individuals—Judge Susan Hoershner, Ellen Wells, and John Carr—she described only a general claim of sexual harassment by her boss. There were no details, no specifics.

Second was the harassment Professor Hill told Senate staffers when she requested confidentiality and to the FBI when she decided she wanted the Senate, but still not the public, to know. To them, she said Judge Thomas repeatedly asked her for dates and talked about pornographic movies, but not himself. And the third version of the harassment was the lurid, graphic and offensive stories she told on Friday during her testimony. There can be little doubt, Mr. President, that Professor Hill magnified the allegations for her live testimony on TV.

But one of the most puzzling chapters in this saga was the role her friends played. Three people claiming to be close friends, and one asserting a close professional relationship, were told by Professor Hill of the ordeal she experienced. But, Mr. President, we heard none of the graphic details from them on Sunday that she told us on Friday. These people had no specifics from Professor Hill. They had no firsthand knowledge of Professor Hill's claims. And even more significantly, they offered no advice to their friend Anita Hill. They said they tried to listen and comfort her.

But, Mr. President, these were four highly intelligent, well educated lawyers, like Professor Hill herself. And they could think of nothing to say to her to help her remedy this horrible situation. What does it say about our system, if four lawyers could not recommend she pursue legal remedies against her harasser? I was particularly struck by Professor Paul, whom Professor Hill told—in 1987—she left the EEOC because she was sexually harassed by a supervisor. Professor Paul went out of his way to tell us he was not opposed to Clarence Thomas's nomination.

He repeatedly said he did not sign an anti-Thomas petition a few months ago. But if he knew Anita Hill to be a victim of harassment by Judge Thomas, then why did he not see this as a disqualifying factor? The reason has to be that he did not connect Judge Thomas to Anita Hill's predicament. Professor Hill never mentioned Clarence Thomas' name to Professor Paul. Once again, a nonspecific charge with no supporting facts, not even Judge Thomas' name, to back it up.

These were not, Mr. President, corroborating witnesses; they were collaborating witnesses—collaborating with the special interest groups that pounced on Anita Hill and her story in their effort to assassinate the character and integrity of Clarence Thomas.

And lastly, although there are many more inconsistencies in this sordid affair, is the matter of what she was told by Senate staff. Mr. President, Anita Hill believed there was a distinct possibility that Judge Thomas would withdraw from the confirmation process if she came forward to the committee with her allegations. I do not know why she wants to keep Judge Thomas off the Court—ideological differences on issues from affirmative action to abortion, and a Washington career that did not go quite according to her plan are among the possibilities.

But one thing is very clear—she thought by coming forward, in confidence before the committee she could make a difference and derail this nomination. We have some overzealous Senate staff to thank for planting that seed in her mind.

Contrast those inconsistencies and open questions with the unshakable testimony we had from Clarence Thomas, and his former colleagues and friends. He categorically denied each of these charges. He never wavered from this denial, never made inconsistent statements.

His testimony was consistent with what we learned about him in his real confirmation hearing—a testament to his strength, his character, his integrity. He came only to clear his name, something he said was virtually impossible to do—he has been tarnished with a stain that cannot be removed. The groups who oppose Clarence Thomas may lie, cheat, and steal to keep him off the Supreme Court. But he will not lie, cheat, and steal to be on it.

And finally, look at the eight former colleagues of Clarence Thomas. Women who appeared before us at 1 o'clock in the morning to tell us how Judge Thomas treated women. We were tired; some wanted to introduce their statements in the record. But these women would not hear of it. No matter what the hour, they wanted to appear in person. They knew both individuals and the way Clarence Thomas treated those who worked for him. Additionally, these women knew what was going on in the Office. When activities like this occur in an office the simple truth is—people know about it. Usually, they talk about it. That did just not happen here.

Mr. President, we have been through an astounding process, that I truly hope ends later today with Judge Thomas's confirmation for Associate Justice of the Supreme Court. If it does, he will have shaken off all the mud his opponents could throw at him. Early on, some said he was a Catholic whose religion would interfere with his judging.

Then, they tried to smear him with marijuana use, a youthful indiscretion we knew about when we confirmed him for the Appeals Court. Next, they called him anti-Semitic, when two speeches showed up with throwaway lines on Louis Farakhan. And now, they have tried to tar him with a charge of sexual harassment.

What do the liberal interest groups fear from this man? That he dares to think for himself? That he challenges the establishment? That he offers some new solutions to some old festering problems? He represents a new kind of role model, one that will not walk in lockstep with the established orthodoxy and one that challenges the prominence and the domination that the groups have maintained over the last 25 to 30 years. Clarence Thomas is a challenge to the status quo, and those special interest groups are threatened.

That is what this fight has been about—it has been about much more, for these groups, than a single nomination. And Prof. Anita Hill, tragically, got caught in the middle with her very believable and sincere charges against him.

Mr. President, who better to trust now as a guardian of our precious liberties than Clarence Thomas? Now, he brings not only his intellect, his understanding of our separate branches of Government, his values and upbringing, but also this ordeal—having his name dragged through the mud, his reputation almost ruined. This dimension is not shared by any other member of the Court, and is bound to have an impact on his sensitivity to our sacred liberties.

I hope we never have to go through an ordeal like this again. It has not been the Senate's finest hour, although I do believe the Judiciary Committee under Senator BIDEN's fine leadership did a fair and thorough job, given the constraints and limitations inherent in the way the committee works.

The PRESIDING OFFICER (Mr. ROBB). The Senator asked to be reminded when 18 minutes had elapsed. Eighteen minutes have elapsed at this time.

Mr. GRASSLEY. Mr. President, I said I never expected, in my years upon entering politics, to go through the spectacle we just went through. It now, I hope, brings Judge Thomas to be confirmed.

I hope we never have to go through an ordeal like this again. It has not been the Senate's finest hour, although I do believe the Judiciary Committee under Senator BIDEN's fine leadership did a fair and thorough job, given the constraints and limitations inherent in the committee's work.

In January we participated in the most serious and weighty matter that we are charged with, and that was on the question of taking our country to war. This weekend we discussed things on television that I am uncomfortable discussing behind closed doors. That is a far distance to travel in less than a year.

It has been asserted that this, too, was part of our democratic system. But I hope that there is a way to restore ourselves and the American people the ideals of representative democracy, ideals that brought down the Berlin Wall, that inspired the student revolt in Tiananmen Square, and that sustained Boris Yeltsin in his standoff with the coup plotters.

I believe we can do it, that we must do it, and I urge my colleagues to confirm Judge Thomas as one step in that direction.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. Mr. President, I yield as much time as the Senator from West Virginia [Mr. BYRD] needs.

The PRESIDING OFFICER. The President pro tempore, Senator BYRD, is recognized for as much time as he may consume.

Mr. BYRD. Mr. President, I ask unanimous consent that a speech which I prepared several days ago on this subject be included in the RECORD.

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

STATEMENT IN SUPPORT OF THE CONFIRMATION OF JUDGE CLARENCE THOMAS

Mr. BYRD. Mr. President, today I rise to indicate my views on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

First, let me say that I am going to vote in favor of Judge Thomas's confirmation. I do so because I support a conservative Supreme Court. I supported the confirmation of Judge Sandra Day O'Connor, a conservative judge. I supported the confirmation of William Rehnquist, a very conservative judge, although I did not support his confirmation as Chief Justice. I supported the confirmation of Judge Antonin Scalia, also a very conservative judge. I supported the confirmation of Judge David Souter, a conservative judge.

I am not comfortable with an "activist" Supreme Court, as was the Warren Court. I believe that Supreme Court justices should interpret the law in accordance with the Constitution, and not try to remake the law. That is the prerogative of the legislative branch of our government.

So, as a supporter of a conservative court, I intend to vote for Judge Thomas. But I do not do so unreservedly. And, as many of my colleagues know, I have not always voted for all conservative nominees. I did not support the confirmation of Judge Robert Bork, who was nominated by President Reagan in 1987 to be an Associate Justice of the Supreme Court. Judge Bork was not confirmed by the Senate.

In the process of making my decision about Judge Thomas, I went back and reviewed the nomination of Judge Bork. I wanted to refresh my memory as to why I had opposed Judge Bork's nomination. In doing so, I reconfirmed in my own mind the reasons I had opposed Judge Bork. The process was helpful to concluding that I would not oppose Judge Thomas. At the same time, my review of Judge Bork's nomination and subsequent rejection, and my review of Judge Thomas's nomination and the hearings thereon, have caused me to have some reservations about Judge Thomas.

I admit that I was inclined to view Judge Thomas favorably from the beginning, to a large measure because of his background and his long record of successes. He is to be admired for having overcome the poverty and deprivations of his childhood. He has struggled against adversity, he has done so with diligence and persistence, and he has achieved far more than what might have been predicted at his birth.

But my admiration for his achievements does not blind me to some reservations I have about some of his views. To put these reservations in perspective, let me briefly review why I opposed the confirmation of Judge Bork.

Judge Bork explained his views openly and extensively before a divided Judiciary Committee, of which I was a member at that time. The balance rested with four uncommitted Senators, including myself. I stated at the beginning of the Bork hearings that I favored then—as I do now—the appointment of conservative judges to the Supreme Court.

The commitment of the four Senators could just as easily have swung behind Judge Bork as against him. I was open to persuasion. So were the other three uncommitted Senators. But we were not persuaded. Indeed, all four of the uncommitted Senators swung against him.

Why? The majority of the full committee became unsettled by Judge Bork's overly narrow interpretation of the law. That feeling of unease reflected the unease of many Americans that there was no assurance that Judge Bork would protect their rights. This, I believe, was the central reason for the rejection of Judge Bork's nomination by the full Senate. Judge Bork rejected the view that unexpressed, or unenumerated rights may be protected by the general provisions of the Constitution. He did not believe that it is the responsibility of a judge to apply history, tradition, precedent, and his perception of the community's values to discern and protect those unexpressed or unenumerated rights.

As every student of history knows, the framers of our Constitution did not feel the necessity to include a Bill of Rights because they had not delegated to the soon-to-be-created National Government the authority to infringe the people's rights. But the opposition rhetoric, and the possibility that Government might through use of some delegated powers actually restrict those precious rights, brought Madison and others to the recognition that it was prudent to add a Bill of Rights. And yet, as Madison worried, listing some rights, because it was not possible to list all, might raise the implication that only the listed ones were protected, and that unlisted ones were indeed subject to the mere will of the majority.

No doubt exists as to the response to this concern. The ninth amendment was the response:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

This amendment clearly implies that there are rights in addition to those spelled out in the first eight amendments, and the fact that such additional rights are not equally spelled out there gives the Government no warrant to take them away. The implication is that these other rights must be discerned by our reasoning applied to our history, to our traditions, to the concepts of natural law, and to the consensus of the community with respect to the values we hold dear. No matter how elaborate the procedure that Government uses, there are some aspects of life, liberty, and property that Government simply may not, without due process, take away.

There were several other areas in which I disagreed with Judge Bork, including his views on the right of privacy, congressional standing, and the role of the independent counsel. Some of these are relevant to a discussion of Judge Thomas's views.

On the right of privacy, Judge Bork rejected this "powerful tradition" in our society, which forbids Government to intrude into the relationship between husband and wife, between parents and child, without a compelling reason. Judge Bork, I am sure, likes his privacy as well as the next person. He just did not think it rises to the level of a protected interest.

Now where does Judge Thomas stand on these issues that were raised during Judge Bork's confirmation hearings? I am not really sure. Since the divisive debate over Judge Bork, the White House has adopted a strategy of sending Supreme Court nominees to

the Hill who have little or no record at all. Witness Justice David Souter, for whom I voted, and now Judge Thomas, for whom I intend to vote.

But it does appear that Judge Thomas does not outright reject the concept of unexpressed, or unenumerated rights—which was my chief reason for voting not to confirm Judge Bork. Judge Thomas believes, or at least he did prior to these confirmation hearings, in the concept of natural law: that there are rights residing initially in each person because of his or her humanity—God-given and antecedent to government's existence, and not dependent on government's bestowal of them.

The fact that Judge Thomas endorses natural law principles—in contrast to Judge Bork's rejection of the concept of unexpressed, or unenumerated rights—suggests that he may have a more open mind about his interpretation of the Constitution than did Judge Bork.

Certainly, Thomas is younger, and if his confirmation hearings are any indication, he is less fixed in his beliefs and judicial philosophy. Some have criticized him for being too vague in his judicial philosophy, and I admit that I have reservations about that myself.

It is my hope that the experience of the Court itself will help Judge Thomas to grow and develop as a jurist. Service on the Supreme Court is one of the highest honors in this land, and I hope that Judge Thomas will prove himself worthy of that honor.

I feel great affinity with Judge Thomas's deep personal belief in a view of life and law that places greater emphasis on individual effort, individual responsibility, and the sanctity of law above race. But I do understand the concerns of those who oppose Judge Thomas's nomination because they believe that his opposition to the traditional approach to civil rights and his opposition to affirmative action render him insensitive to those who do not have his personal reservoir of inner strength. I also understand the concerns of those who fear how he might rule on the matter of overturning *Roe* v. *Wade*—and I share this concern—and on how he might rule on other matters pertaining to the rights to privacy.

But I am prepared to give Judge Thomas the benefit of the doubt on these issues. I am prepared to hope that the experience of the Court itself will bring forth the best in him and give him the sensitivity that is needed on such divisive issues. I am even prepared to overlook the grossly intemperate remarks about the Congress that he made when he was a part of the Reagan Administration, although I admit that I find it hard to swallow his praise for Lt. Col. Oliver North.

I have reservations about the nomination of Judge Thomas to be an Associate Justice of the Supreme Court. I would have preferred a more distinguished nominee, with greater legal experience, legal practice, longer tenure as a judge. I would have preferred a nominee with a better grasp of key Court decisions. I would much have preferred a nominee who had not made intemperate remarks about the Congress, and had I remained on the Judiciary Committee, I would have given Judge Thomas the opportunity to review those remarks at some length.

But because I support a conservative Supreme Court and because I hope that the experience of the Court will help Judge Thomas to grow and develop as a jurist—and because I do not believe he poses the threat to the rights of the American people that Judge Bork did—I intend to vote in favor of the confirmation of Judge Thomas.

Mr. BYRD. Mr. President, I do not come to the floor today to debate the confirmation of the nomination of Judge Thomas. I come, rather, to state my viewpoint, believing that I have a responsibility to my constituents, a responsibility to Judge Thomas, a responsibility to my colleagues in the Senate, a responsibility to the people of the United States, and a responsibility to myself, to do so.

I have not previously spoken on this subject. I have indicated from the very beginning to the President and to one or two Senators—Senator DOLE in particular—that it was my inclination to vote for the confirmation of Judge Thomas. And my inclination was based on my support of conservative nominees to the courts.

I believe that if there is to be a liberal body it should be the legislative body. I believe that the courts should be conservative. Several days ago, I was impressed to hear Judge Thomas say, as reported in the newspapers, that he believed his role as a judge to be that of interpreting the Constitution and the laws of the United States, not that of rewriting or remaking the laws. I did not like the Warren court, and have so stated many times on this floor, because, in my view, it sought to fulfill the functions of the legislature instead.

I prepared a statement in support of the confirmation of Judge Thomas. And when I left the Hill on last Thursday evening, after working in the Interior Appropriations conferences for 2 days, I left my speech in support of Judge Thomas on my desk, prepared to state today that I was going to vote for Judge Thomas to be an Associate Justice on the U.S. Supreme Court.

Mr. President, I watched the hearings at home on my television set. I know I have previously said that if we want to improve the education of our young people, we should throw out the television sets, or at least cut down the time that our youngsters view them. But in this instance my daughter asked me what I was going to do with my television set because I sat there glued to that television set all of Friday, into the wee hours of the night Saturday, into the wee hours of the morning. I watched every minute of the hearings with the exception of 15 minutes.

On Sunday Mr. DOLE and Mr. MITCHELL were on one of the programs, and they went over 15 minutes beyond 12 noon, and that was the reason I missed 15 minutes of what was happening in the large caucus room in the Russell Building.

I taped the testimony of Anita Hill, and I taped the testimony of Judge Thomas. I taped their appearances and I have replayed them.

This is a very extraordinary case. I know of no precedents of this kind; nothing similar, certainly on all fours, or even approaching that.

Millions of eyes all over this country have been watching the hearings. Millions of ears have been listening to the hearings. And, in listening to the call-in shows, C–SPAN, I have listened to what the people are saying. They are interested. They are watching. They are listening. And they have been quick to say that they have made up their minds, in most instances, one way or the other. I have read about the polls indicating what the people out beyond the Beltway are thinking.

Mr. President, I have concluded that I shall vote against the nomination of Judge Thomas.

Before going into the reasons, let me compliment JOE BIDEN—Senator BIDEN and Senator THURMOND on the fairness which they demonstrated throughout the televised hearings to the witnesses, to the nominee, and to their colleagues. It was a very difficult position that Senator BIDEN, as chairman of the committee in particular, had to maintain: Fairness, patience under great pressure, and in some cases under provocation. And so I do want to commend the chairman and ranking member.

I was formerly a member of the Judiciary Committee for several years. I am no longer a member. I am concerned about the atrocious, abominable leak that occurred.

It was a detestable thing. I do not know who is responsible, whether it is a Senator or a staff person. That is not my province, to make a judgment in that situation. But it reflected very adversely upon the committee, and I am sorry that it has reflected on the Senate as a whole. I can understand the outrage that has been expressed by committee members and others. I can understand the embittered feelings and expressions by Judge Thomas. It was a reprehensible, underhanded thing to do. And all indications are that it came from the Democratic side. I detest it.

I can understand, as I say, the feelings of astonishment and outrage. But I want to echo what the majority leader said earlier today. If it is an outrage for a leak to occur in the Judiciary Committee; it is also an outrage for a leak to occur in the Ethics Committee. And I must echo the statements, at least as I understood them, by the majority leader. We heard no sense of outrage when they occurred in the Ethics Committee. Two wrongs do not make a right, and one wrong does not make a right. But the outrage should pervade the Chamber on both sides of the aisle and in both cases because, "He who the sword of heaven will bear should be as holy as severe."

Now as to my reasons for the conclusion that I have reached to vote against Judge Thomas. I believe Anita Hill. I believe what she said. I watched her on that screen intensely and I replayed, as I have already said, her appearance and her statement. I did not see on that face the knotted brow of sa-

tanic revenge. I did not see a face that was contorted with hate. I did not hear a voice that was tremulous with passion. I saw the face of a woman, one in thirteen in a family of southern blacks who grew up on a farm and who early in her life belonged to the church, who belongs to the church today, and who was evidently reared by religious parents. We all saw her family as they came into the hearing room—the aging father, the kind mother, hugging their daughter, giving her solace and comfort in her hour of trial.

I saw an individual who did not flinch, who showed no nervousness, who spoke calmly throughout, dispassionately and who answered difficult questions. Some thought there were inconsistencies, but a careful reading of the exact language of the questions that were put to her can, at least in one case, and perhaps in others, explain away the appearance of an inconsistency in what she was saying in response to that question—about which some loose talk was subsequently made about possible perjury.

I will not go into further details here, but it is very easy to charge inconsistencies in answering questions. But I thought that Anita Hill was thoughtful, reflective, and truthful. That was my impression. Granted, let us say, that there may have been a few seeming inconsistencies. Granted, for the sake of those who think there were inconsistencies. That does not mean that she was lying; that does not mean that her charges were not true. Perhaps longer hearings would have given her the opportunity and the committee the opportunity to clarify whatever seeming inconsistencies there may have been, to the satisfaction of all.

She was a reluctant witness. There are those who ask why did she not come forward in the previous confirmation hearings? She simply was not contacted in the previous hearings. They ask, why did she wait 10 years? The fact that she waited 10 years does not negate the truth of her assertions. She explained the reasons why she waited. She explained that she was reluctant to come forward, she explained that she did not want to go forward. She explained that she did not even want to be there in that large chamber in the Russell Building that day and at that time. She explained that she had spoken to other individuals very early on—1981, 1982, 1983, 1987—and those same persons came forward later in the hearings and corroborated the fact that she had, indeed, talked about this several years ago.

Why did she not file a claim? She stated her reasons. She said that perhaps she used poor judgment. How many in this Chamber have not used poor judgment in the past?

Who can stand in this Chamber and say, "I have never used poor judgment?" One can understand that at the age of 25, an individual might be more vulnerable toward the exercise of poor judgment.

Why, one might ask, did not Procopius write his "Secret History" while the Emperor Justinian was living? Procopius wrote about the profligacy, the dishonesty, the crimes committed by Justinian and Theodora, his harlot wife. He wrote about the same kind of profligacy and harlotry and crimes committed by Antonina, the wife of Belisarius, a great Roman general who served under Justinian. When Procopius wrote his earlier "Histories" when he wrote his work on "Buildings," giving great credit to Justinian for his work on public buildings and great edifices, why did Procopius not then reveal the sensitive secret matters which he knew about, at the very time they were occurring, he having been born around 500 A.D. and having died around 565 A.D., the same year in which both Justinian and Belisarius died.

He knew of what he spoke, but he did not dare, for his own reasons, to publish the secret history. He himself stated that, as long as those responsible for what happened were still alive, it was out of the question to tell the story in the way that it deserved. He knew that he would be subjected to torture and death and the confiscation of his property, perhaps the destruction of his family, had he published those things before Justinian died and before Theodora died and before Belisarius died. Consequently, the "Secret History" by Procopius was not published for centuries after his own death.

So there are reasons for Anita Hill's reluctance to reveal her secrets, and as far as I am concerned, without going into them in detail—everybody has heard what has been said—I will not go into them here.

There has been loose talk about fantasies. The former dean of Oral Roberts University explained that he had regretted the use of the word "fantasy." He had regretted the use of it. It was just a word that he had used on the spur of the moment.

This woman was not fantasizing. As one who has lived a long life and who has had the opportunity to see many people in my life, in all walks of life, I think I have some ability to form an opinion of another person when I listen to that person, when I look into his eyes, to determine in my own view whether he may be fantasizing, whether he is out of his mind, whether he is some kind of nut, whether he is a psychopath. It comes through. None of that came through to me in Anita Hill's statements.

There have been theories about a conspiracy, special interest groups got to her, or she invented this, just something that she made up. A woman spurned, a woman scorned. I do not believe that any reasonable man could carefully look at that woman's face, listen to what she had to say, set in the whole context of the circumstances, and believe that she was inventing her story—suddenly, at the very last moment. She had no knowledge that anyone was going to contact her about this. This came out of the blue.

Truth is a powerful thing, and sometimes it is a strange thing. To those who wish to think of a confirmation hearing as a court case, as having the surroundings and carrying the environment of trial, one may see things perhaps differently. This is not a court case. This is a confirmation hearing. They say, well, there was nobody else who said this; there was no pattern. Would it not be reasonable to believe that there would be a pattern if this man were like this? Would he not be saying this thing to others?

Well, who knows? Perhaps he did. I am not going to say he did. I do not know. But since the flights of imagination seemed to be rampant around here, one might imagine there was somebody else. And even so, if there were no others, is it not possible that this could have happened in this case, that this could have happened just this once? Of course, it is possible.

One may say, well, it was not probable. One does not know about that.

Mr. President, what are my other reasons, aside from believing Anita Hill? I was offended by Judge Thomas' stonewalling the committee. He said he wanted to come back before the committee and clear his name. That is what I heard. He wanted to "clear his name." Well, he was given the opportunity to clear his name, but he did not even listen to the principal witness, the only witness against him. He said he did not listen to her. He was "tired of lies."

What kind of judicial temperament does that demonstrate? He did not even listen to her. What Senator can imagine that, if he were the object of scrutiny in such a situation, he would not have listened to the witness so that he would know how best to respond, how to defend himself, how to clear his name? But, instead, Judge Thomas came back and said he did not even listen. He set up a wall when he did that, because it made it extremely difficult for members of the committee to ask him what he thought about this or that which she said?

He wanted to clear his name, he said. I know that hindsight is great, and I would imagine that most of the Members of that committee now wished they had asked for a week's delay. That should have been done. That opportunity is gone. Perhaps much of this travail could have been avoided with a week's delay and by calling in the two persons—principal persons here—and talking with them in private.

But again, that is water over the dam. We now have only what happened,

the circumstances, to deal with. Judge Thomas asked to come back to clear his name. I was extremely disappointed and astonished, as a matter of fact, when he came back to the committee and said he had not listened—had not listened—to Anita Hill.

By refusing to watch her testimony, he put up a wall between himself and the committee. How could the committee question him? How could the committee learn the truth if the accused refused even to listen to the charges? What does this say about the conduct of a judge? He is a judge now, a circuit court of appeals judge.

What does this say about him, the conduct of a judge, a man whose primary function in his professional life is to listen to the evidence, listen to both sides, whether plaintiff or defendant in a civil case, or a prosecutor and the accused in a criminal case?

I have substantial doubts after this episode about the judicial temperament of Judge Thomas, doubts that I did not have prior to last weekend's hearings. How can we have confidence if he is confirmed that he will be an objective judge, willing to decide cases based on the evidence presented if, in the one case that will matter most to him in his lifetime, he shut his eyes and closed his ears and closed his mind, and did not even bother to watch the sworn testimony of Anita Hill?

She was testifying under oath. He professed to want nothing more than to clear his name. Yet he could not be bothered to even listen to the allegations from the person making the allegations.

Another reason why I shall vote against Judge Thomas: He not only effectively stonewalled the committee; he just, in the main, made speeches before the committee; he managed his own defense by charging that the committee proceeded to "high-tech lynchings of uppity blacks."

Mr. President, in my judgment, that was an attempt to shift ground. That was an attempt to fire the prejudices of race hatred, and shift the debate to a matter involving race.

I frankly was offended by his injection of racism into the hearings. This was a diversionary tactic intended to divert both the committee's and the American public's attention away from the issue at hand, the issue being, which one is telling the truth? I was offended. I thought we were past that stage in this country.

So instead of focusing on the charges and attempting to be helpful to the committee in clearing his name, he invoked racism. Of course, he was embittered by the leak, and he was justified to so state. But, instead, he indicted the whole committee, he indicted the Senate, and he indicted the process. Not everybody in the Senate is guilty of leaking material. I did not leak it; I did not leak anything to the press. But he impugned me. And he impugned you, Senator SASSER; you are not on the committee; he impugned you, Senator PRYOR, and you are not on the committee; and you Senator BRADLEY, and you are not on the committee. He did not make any distinctions. He did not discriminate among us. We were all guilty. He was bitter at the Senate, at the committee, at the process.

He should have been bitter at the person or persons who leaked whatever it was that was leaked, and he could have so stated in the strongest terms. But instead, he lectured the committee. He found fault with the "process." The process is a constitutional process that was determined by our forefathers in Philadelphia in 1787. That is the process.

And it is because of that process that Judge Thomas was given his day to clear his name. It is because of the process that he was able to overcome poverty. It was because of the process that he was able to stay out of prison in this country, that he was able to get that fine education. It was because of the process. It was because of the process that he was heard before the committee and given an opportunity to answer questions, given an opportunity to clear his name. That is the process.

If we are only talking about a leak, then that is something else. But one can condemn leaks without condemning the committee, without condemning the Senate, and without condemning the process.

He tried to shift ground. I think it was blatant intimidation, and, I am sorry to say, I think it worked. I sat there and I wondered: Who is going to ask him some tough questions? Are they afraid of him?

He said to Senator METZENBAUM, "God is my judge; you are not my judge, Senator." Well of course, God is also my judge. I am not God. But I do have a vote. And I have a responsibility to make a determination as to how I shall vote. That kind of talk, that kind of arrogance will never get my vote.

I do not know who—I will say it again—I have no idea, I cannot prove anything; if a particular Senator is responsible for the leak, that is one thing. But I have doubts that 14 Senators did it. I have doubts that 13 did, or that 12, or 10, or 8, 6, 5, 4, 3, or 2 did. But to condemn and to repudiate and to excoriate the committee, the Senate, and the process went too far.

Leaks are deplorable. They are reprehensible, and I know we all are going to say, let us do something about it. But human nature has never changed. It has been the same since God drove Adam and Eve from the Garden and said: In the sweat of thy brow shalt thou eat bread. And He created a serpent. He said: You will bruise the head of that serpent, and it will bruise your heel.

There will always be leaks.

We ought to do whatever we can to prevent them. And if we can find the Senator who, if, let us say, if it was a Senator, and that can be proved, I will be among the first to vote to expel him. If it was a staff member, I cannot vote to expel him. I simply think he ought to be fired.

But there will always be leaks—always. But the unfortunate way in which this information has come to light should not be enough to cause us to disregard the possible relevancy, the possible relevancy and the possible accuracy of a charge which so pertains to the character and the temperament of an individual being considered for this august and powerful position.

Let me say, Mr. President, to my colleagues, this is a powerful position to which he is being appointed, if he is appointed, and I do not have any doubt that the Senate will confirm him. I said I did not come here to debate the matter. I do not think I am going to change anyone's minds. But I am going to make my statement. Judge Thomas made his statements in no uncertain terms. So I am going to make mine.

I want to compliment the chairman. I do not think the chairman was intimidated. I watched him carefully. If a person wants to clear his name, why should the committee members be intimidated by that person? If I had previously said that I would vote for him, I would have changed my position on that committee.

But so many of the Democrats had already said they were against him. They had already voted against him. So they could not help that. They did not realize at the time that this was coming. But to an extent, their previous vote had put them in a difficult position to question because everybody knew where they were coming from. I am sure that must have been their feeling: Everybody knows where I am coming from, they probably thought; I have already said I am against him. So, to that extent, it sort of taints my question. I can suppose they reasoned thusly.

I am very sorry that the matter of race was injected, not in an effort to clear one's name, but in an effort to shift the ground. So that, instead of making an effort to clear his name in the minds of the committee members and in the minds of Senators who were not on the committee, he shifted the blame to the process and to race prejudice.

I think it is preposterous. A black American woman was making the charge against a black American male. Where is the racism? Nonsense; nonsense!

Mr. President, I will get to my final reason for voting against Judge Thomas.

(Mr. PRYOR assumed the chair.)

Mr. BYRD. Mr. President, this question of giving the benefit of the doubt,

I have heard it said, well, if you have a doubt against this—and it is obvious nobody can really say with certitude as to which one is telling the truth, the whole truth, and nothing but the truth, so help him or her God—then you should give the benefit of the doubt to Judge Thomas. He is the nominee.

Mr. President, of all the excuses for voting for Judge Thomas, I think that is the weakest one that I have heard. When are Senators going to learn that this proceeding is not being made in a court of law? This is not a civil case; it is not a criminal case wherein there are various standards of doubt, beyond a reasonable doubt, so on and so on; if you have a doubt, it should be given to Thomas.

Why? This is a confirmation process, not a court case. We are talking about someone who was nominated for one of the most powerful positions in this country. Some say, he will only be one of nine men. But suppose it is a divided Court, four to four in a given case. That one man will make the difference. Suppose it is a divided Court and he does not show up for some reason, he does not vote on a matter. A tie is in essence a decision in some cases.

His decision will affect millions of Americans, black, white, minorities, the majority, women, men, children, in all aspects of living, Social Security, workmen's compensation, whatever it might be that might come to the Supreme Court of the United States. That one man in such an instance will have more power than 100 Senators, more power in that instance than the President of the United States. This is not a justice of the peace. This is a man who is being nominated to go on the highest court of the land. Give him the benefit of the doubt? He has no particular right to this seat. No individual has a particular right to a Supreme Court seat. Why give him the benefit of the doubt?

Such an honor of sitting on the Supreme Court of the United States should be reserved for only those who are most qualified and those whose temperament and character best reflect judicial and personal commitments to excellence.

A credible charge of the type that has been leveled at Judge Thomas is enough, in my view, to mandate that we ought to look for a more exemplary nominee. If we are going to give the benefit of the doubt, let us give it to the Court. Let us give it to the country. Judge Thomas professed, "You may kill me, look what you are doing to me," and "what you are doing to my country."

So, I will take that on. If Judge Thomas is rejected, he will not lose his life. He will not lose his property. He will not lose his liberty. He will go on being a judge of the appellate court, the youngest judge on the court, driving his car, mowing his grass, going to McDonalds, eating a Big Mac, and living his life, watching his son play football.

Now I do not say any of those things pejoratively, but those are his words. So why should we give the benefit of the doubt to him? He will not have to worry about a job. You cannot take his job away from him except through the impeachment process. He will be a judge for life. And his salary is inviolable. You cannot cut it.

But, he will be on that Court 30 years, if he lives out the psalmist's span of life. He will affect the lives of millions. He will make decisions which will impact on their ability to own a car or even to eat a Big Mac. Their liberty, their lives, their property, will be in his hands.

Now, if there is a cloud of doubt, this is the last chance. He is not running for the U.S. Senate, when there would be another chance in 6 years to pass judgment on him. He is not running for the House of Representatives, wherein there would be another chance in 2 years. He is not even running for office. He has been nominated to the Supreme Court of the United States, and if he is not rejected—I believe he will not be rejected; I think too many have made up their mind, I think too many have been swayed with this argument about the benefit of the doubt—this is the last clear chance, to use a bit of legal terminology, this is it. The country will live with this decision for the next 30 years.

I realize it is possible that in the process a man could have been wronged. If it were a criminal trial, it would be different. That is what it is not.

Now then this final argument that I saw in the Washington Post editorial this morning to the effect that there should be two—I do not have it in front of me, but the gist of it was, as I got it, there needs to be two witnesses or some such. I do not have it. I want to be exact.

I am reading a sentence and at the end of my statement I ask unanimous consent that the entire editorial be printed in the RECORD.

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

(See exhibit 1.)

Mr. BYRD. It reads:

> It goes against a tradition which holds that the unproven word of a single accuser is not enough to establish guilt.

Well, there we are in the court setting again. This is a confirmation process, not a judicial process.

Under the old English law and the law of our forefathers and our law today, in a case of treason, one witness is not enough. That is a case which, under the English law, was a criminal trial, impeachment, a criminal trial; he could lose his life, he could be banished, he could lost his liberty, he could lose his property, he could lose them all. That was a criminal trial. That was a criminal trial under the old English law.

And so that was transferred into the Statute of Treasons, I believe, in 1352 or thereabouts, and it came down to our Constitution. You have to have two witnesses to a treasonous act. The editorial continues, we have a tradition "which holds that the unproven word of a single accuser is not enough to establish guilt." And the closing sentence, "But in these circumstances history gives us too many reasons not to act on the unproven word of a single accuser." Again, the editorial is confusing a confirmation process with a court setting.

I disagree with the statement, "History does not give us any reasons not to act on the unproven word of a single accuser "in the confirmation of a nominee."

So let us not get all confused about what we are doing. This is a confirmation process. And if there is a doubt, I say resolve it in the interest of our country and its future, and in the interest of the Court. Let us not have a cloud of doubt for someone who is going to go on that court and be there for many years.

Now, Mr. President, I want to close by talking just briefly again about the "process," the process in the larger sense.

Judge Thomas sought to blame the process and to avoid the real issue. But it is my judgment that that does not clear Judge Thomas' name.

> This is the excellent foppery of the world, that when we are sick in fortune—often the surfeit of our own behavior—we make guilty of our disasters the sun, the moon, and the stars.

Shakespeare went from "King Lear" to "Julius Caesar," when Cassius said to Brutus:

> The fault, dear Brutus, is not in our stars,
> But in ourselves, that we are underlings.

Judge Thomas sought to blame his troubles on the process, but his problem was of his own making.

So, let us, as was said in the hearings from time to time, let us keep our eye on the ball. We are going to cast a very important vote today. And it is not like sin, in the sense that one may be forgiven for it. But once this vote is cast, there is no recourse for restoration.

I have tried to speak from the head. And, Mr. President, my heart tells me that I am right. I will not attempt to criticize any other Senator's vote. Every Senator has not only the right but also the duty to vote as he sees fit.

In Milton's "Paradise Lost," man is described as having a will. He has the power of the will. Nobody will stand like the Persian monarchs behind their soldiers or behind Senators and lash them into battle or dig trenches behind them to keep them from retreating. It is up to every Senator to decide, and

every Senator can justify his position any way he wishes.

As I say I am not here to debate. I am not here to try to change men's minds or women's minds. I am here to state my own sound views as I see them, through my own lights, and after having carefully weighed this matter; after having gone from being a supporter of Judge Thomas for the reasons I have said—and my previously intended speech will be in the RECORD to show the reasons why I was supporting him—having gone from that position to the position I have stated today. I believe that it is my country that will be hurt in the event Judge Thomas goes on the Court.

Perhaps we need to clean up the process if we can. But the "process" is a constitutional process, and it has done us well for over two centuries. And as far as I am concerned the benefit of the doubt will go to the Court and to my children and to my grandchildren and to my country.

EXHIBIT 1

[From the Washington Post, Oct. 15, 1991]

THE THOMAS NOMINATION

One month ago in this space we said we thought Judge Clarence Thomas should be confirmed to the Supreme Court. Our endorsement was not born of enthusiasm but rather of conviction that "on the strength of what we know of his record and the testimony given so far . . . Clarence Thomas is qualified to sit on the court." That was Sept. 15. Today is Oct. 15, but it seems more as if a century had passed than a month. As seems to be true of practically everyone else, we are not satisfied that the Senate Judiciary Committee hearings over the past weekend disposed of the question they were reconvened to resolve: namely, whether Judge Thomas or Prof. Anita Hill, the woman who has accused him of sexual harassment, is telling the truth. She could not conclusively establish the validity of her charges; he could not conclusively disprove them. And there we are. The Senate is scheduled to vote today.

For us there are really only two options. One is to argue for rejection of Judge Thomas on the ground that even though the charges against him were not proven, there remains a cloud of doubt that has not been and perhaps can never be dispelled. There is some merit to this position: it protects against the worst outcome (Judge Thomas's being found at a later date to have lied about these things). And it will in retrospect be at least understandable and eminently forgivable if the outcome goes the other way. That is, if it should turn out that Prof. Hill was the guilty party and Judge Thomas the victim, well, unfair as it was, people will feel that protecting against the risk to the court was worth the unfairness to him.

We cannot accept this argument. It goes against a tradition which holds that the unproven word of a single accuser is not enough to establish guilt.

The accusation Prof. Hill made is a grave one and would clearly disqualify Clarence Thomas for the Supreme Court if it were proven. We are aware that proof in cases of this kind is very hard to come by especially after so long a time has elapsed. But to say that proof is hard to attain is not to say that it is unnecessary. After three days of extraordinary testimony and procedure, it seemed to us that the weaknesses in the account Prof. Hill set out were not dispelled and sufficient additional support for her position did not materialize. Four witnesses said Prof. Hill had told them years ago that Clarence Thomas had sexually harassed her in the sense of pursuing her against her will. None said she had told them of his alleged obscenities. None seemed to know Judge Thomas or to have ever been privy to their work-place or social relationship. Those witnesses who appeared before the committee and who had been part of Prof. Hill's and Judge Thomas's working life all testified on the other side. The lone voice accusing Judge Thomas in that hearing room remained Anita Hill's. Her accusations, in our view, did not have to be overwhelmingly demonstrated in order to be convincing. But even under this fairly loose standard by which we ourselves were judging the proceedings, they came up short.

So, if the vote is held today, after all, we can only reaffirm our position that Judge Thomas should be confirmed. We say this with the same unhappy sense that others all over the country apparently share that, at this point, no one can be 100 percent certain of which of them is telling the truth. But in these circumstances history gives us too many reasons not to act on the unproven word of a single accuser.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the recess to begin at 12:30 p.m. be vitiated and that the additional time for debate be equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. We have no objection, Mr. President.

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

Mr. BIDEN. Mr. President, before I yield to my colleague, although we have no absolute agreement that we will alternate, I think it is a good practice if we continue to alternate among those who are for and against the nomination. My calculation is probably off, but I roughly think that we have about 150 minutes left or thereabouts for those who are opposed to the judge. And roughly the same or a little more who are supportive of the process—of the process? Of Judge Thomas.

I might say to my colleagues who are interested in speaking in opposition of Judge Thomas that if I am correct, that I have roughly 150 minutes—120 minutes, I have left, then, I am just told—we already have 10 Members, 9 of whom are asking for 20 minutes to a half-an-hour. So to any Member who wishes to speak on this who is within earshot, it would be useful if they would let the Senator from Delaware know that so we can begin to make sure everyone has an opportunity to speak sometime.

I yield the floor.

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

Mr. THURMOND. Mr. President, I yield 25 minutes to the distinguished Senator from Pennsylvania [Mr. SPECTER].

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized for 25 minutes.

Mr. SPECTER. I thank the Chair and I thank my distinguished colleague from South Carolina, the ranking member. And I compliment him and Senator BIDEN for their outstanding work.

Mr. President, after the regular hearings concluded I stated my support for Judge Thomas because I found him to be intellectually, educationally, professionally qualified. When Professor Hill presented her statement on October 7, it seemed to me that we should proceed to the hearings which we have just conducted. I think it would have been preferable had we had Professor Hill earlier. By 20/20 hindsight I think we should have then established the hearings which have just been concluded.

Mr. President, they were on a very tight timeframe, and I have concerns about whether we have taken long enough. I was one of two dissenters on the committee when we chose to close the witness list.

But we have responded to the direction of the full Senate the best we could. We have put in long hours trying to come to a conclusion on this very, very complex matter.

Mr. President, I have said at the hearings that I did not regard them as adversarial proceedings and that I did not approach the matter as an advocate. I was asked by Senator THURMOND to do the questioning of Professor Hill and I agreed to do so, realizing that it would not be an easy matter because the underlying issue of sexual harassment is one which is of enormous importance in our country and it is plain that there are tremendous numbers of sexual harassment cases which have gone unreported and unpunished. You have in the overall hearings on Judge Thomas many people who are fervently opposed to him on grounds of philosophy and then you have many of those same people who are very much concerned about women's issues—as, frankly, am I—so that it has been a very, very difficult matter. But we were asked to make a determination as to what happened here and we have done our best to do that.

As I have said, I would have liked to have taken more time. After the hearings were concluded the issue was raised about Professor Hill's medical records, for example; as to whether they might show some information or shed some light on what she had experienced, where some statement might have been made to a physician in the course of medical treatment.

We heard later about a roommate. And there is much that, regrettably, we could not do within the timeframe. But we have to proceed today and I am prepared to do so.

In my judgment, Mr. President, the weight of the evidence supports Judge

Thomas, and I say that because of the underlying evidence that Professor Hill moved with Judge Thomas from the Department of Education to the EEOC after he had made these statements to her, after he had stated his sexual harassment, as she viewed the statements. It seemed to me that one might have expected her not to go to another job when that had occurred. She explained that she went with him because the statements had stopped, because she was interested in civil rights, and because she would not keep her job at the Department of Education.

It turned out that, in fact, she could have retained her job at the Department of Education, and even where the comments had stopped, that was a serious factor in my mind as to judging the underlying issue.

Then there were a series of calls which Professor Hill made to Judge Thomas. She initially denied having made the calls. And then when confronted with the telephone logs, she conceded that, in fact, she had made the calls.

There were 11 calls recorded which came from Professor Hill where Judge Thomas was not present. So, that is written down. There was testimony that there were more calls. Judge Thomas' secretary said five or six calls. That is not necessarily an enormous number of calls, but it is some significant contact and raises a question why, in the face of this sexual harassment, did Professor Hill continue to have this kind of contact?

One of the very difficult issues in this case has been for us to understand the attitude of a woman in this circumstance. The question has been raised that there are 14 men on the committee and we are struggling with this issue. It might have been better had we taken more time to get the woman's point of view. But, again, we operate within the time constraint.

We heard testimony that it is to be expected, that it is not unusual for Professor Hill to have continued to maintain a professional relationship with Judge Thomas because she needed him, she needed letters of recommendation. One witness, I think, said she had tied her star to him.

But then there were some factors as to a personal relationship. Professor Kothe from Oral Roberts Law School testified that they were together in a social setting and were seen laughing together and appeared to have a relationship which went far beyond the matter of just a strictly professional relationship which a woman might feel she had to have even if she had been sexually harassed.

When they were together at Professors Kothe's house one day having breakfast, Professor Hill drove Judge Thomas to the airport. All of that raises the question as to whether a woman who had been sexually harassed would maintain that kind of a relationship.

The telephone logs, Mr. President, bear some light on this issue, and Professor Hill explained that many of these calls were for professional reasons and she was calling at the request of somebody else. But there were other calls which appear to be of a personal nature. The log reported on January 30, 1984, after the sexual harassment is supposed to have occurred, in writing: "Just called to say hello. Sorry I didn't get to see you last week", which has the overtone of a personal call.

A call on August 4, 1987, 4 o'clock: "In town till 8/15" and a telephone number of a hotel again raising the inference or suggestion that there is something more than just a professional relationship.

I repeat, Mr. President, the difficulty of evaluating this from a woman's point of view and also the additional difficulty that when you have a sexual harassment charge that the emotions run high and that when you make a finding in favor of the man, in favor of Judge Thomas and against the woman, against Professor Hill, that there is an overtone of discouraging women from coming forward, and there is an overtone of discouraging women from asserting their rights by a group of 14 men who may not really understand all these ramifications.

But we searched very hard through this record in an effort to treat Professor Hill in a very polite and professional way. But it was necessary to ask questions and it was necessary to ask precise and pointed questions.

There was one exchange, Mr. President, which had significant weight in my mind, and that was an exchange which I had with Professor Hill over the story which appeared in USA Today which raised the issue as to whether Professor Hill was contacted by Senate staffers in a context that if she came forward and made these serious charges, that Judge Thomas would withdraw, and it would not be necessary for these very elaborate proceedings to be undertaken.

When I questioned Professor Hill about that, she denied that there was ever any such conversation in an extended morning question and answer session. Then in the afternoon, Professor Hill came back and flatly changed her testimony. I was very disturbed by that, Mr. President, in terms of the credibility of Professor Hill, much more so than her change of testimony that she had not received the calls and then, when confronted with the logs, admitted it and much more so than the issue of leaving the Department of Education because perhaps there she might not have known that she could have stayed on.

Overnight the transcript was prepared, and the next day I read the transcript and came to the conclusion that her change in testimony was an intentional misstatement of fact. I think it is worthwhile to take the time to go through this testimony because the central issue we have here is credibility, whether Judge Thomas was correct or whether Professor Hill was correct.

I cannot read everything in the limited time which is available, so I ask unanimous consent, Mr. President, that the full transcript from pages 79 to 85 and from 203 to 208 be printed in the RECORD.

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

Senator SPECTER. Professor Hill, the USA Today reported on October 9,

"Anita Hill was told by Senate staffers her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that 'quietly' and behind the scenes' would force him to withdraw his name."

Was USA Today correct on that, attributing it to a man named Mr. Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer?

Ms. HILL. I do not recall. I guess—did I say that? I don't understand who said what in that quotation.

Senator SPECTER. Well, let me go on. He said,

"Keith Henderson, a 10-year friend of Hill and former Senate Judiciary Committee staffer, says Hill was advised by Senate staffers that her charge would be kept secret and her name kept from public scrutiny."

"They would," apparently referring again to Mr. Henderson's statement, "they would approach Judge Thomas with the information and he would withdraw and not turn this into a big story, Henderson says."

Did anybody ever tell you that, by providing the statement, that there would be a move to request Judge Thomas to withdraw his nomination?

Ms. HILL. I don't recall any story about pressing, using this to press anyone.

Senator SPECTER. Well, do you recall anything at all about anything related to that?

Ms. HILL. I think that I was told that my statement would be shown to Judge Thomas, and I agreed to that.

Senator SPECTER. But was there any suggestion, however slight, that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known or for you to come forward under circumstances like these?

Ms. HILL. There was—no, not that I recall. I don't recall anything being said about him being pressed to resign.

Senator SPECTER. Well, this would only have happened in the course of the past month or so, because all this started just in early September.

Ms. HILL. I understand.

Senator SPECTER. So that when you say you don't recall, I would ask you to search your memory on this point, and perhaps we might begin—and this is an important subject—about the initiation of this entire matter with respect to the Senate staffers who talked to you. But that is going to be too long for the few minutes that I have left, so I would just ask you once again, and you say you don't recollect, whether there was anything at all said to you by anyone that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instrument

that "quietly and behind the scenes" would force him to withdraw his name. Anything related to that in any way whatsoever?

Ms. HILL. The only thing that I can think of, and if you will check, there were a lot of phone conversations. We were discussing this matter very carefully, and at some point there might have been a conversation about what might happen.

Senator SPECTER. Might have been?

Ms. HILL. There might have been, but that wasn't—I don't remember this specific kind of comment about "quietly and behind the scenes" pressing him to withdraw.

Senator SPECTER. Well, aside from "quietly and behind the scenes" pressing him to withdraw, any suggestion that just the charges themselves, in writing, would result in Judge Thomas withdrawing, going away?

Ms. HILL. No, no. I don't recall that at all, no.

Senator SPECTER. Well, you started to say, that there might have been some conversation, and it seemed to me——

Ms. HILL. There might have been some conversation about what could possibly occur.

Senator SPECTER. Well, tell me about that conversation.

Ms. HILL. Well, I can't really tell you any more than what I have said. I discussed what the alternatives were, what might happen with this affidavit that I submitted. We talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking, going to the FBI and getting more information; some questions from individual Senators, I just, the statement that you are referring to, I really can't verify.

Senator SPECTER. Well, when you talk about the Senate coming back for more information or the FBI coming back for more information or Senators coming back for more information, that has nothing to do at all with Judge Thomas withdrawing, so that when you testified a few moments ago that there might possibly have been a conversation, in response to my question about a possible withdrawal, I would press you on that, Professor Hill, in this context: You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month.

Ms. HILL. And I have done that, Senator, and I don't recall that comment. I do recall that there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be—that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that.

Senator SPECTER. Well, when you say a number of things might occur, what sort of things?

Ms. HILL. May I just add this one thing?

Senator SPECTER. Sure.

Ms. HILL. The nature of that kind of conversation that you are talking about is very different from the nature of the conversation that I recall. The conversations that I recall were much more vivid. They were more explicit. The conversations that I have had with the staff over the last few days in particular have become much more blurry, but these are vivid events that I recall from even eight years ago when they happened, and they are going to stand out much more in my mind than a telephone conversation. They were one-on-one, personal conversations, as a matter of fact, and that adds to why they are much more easily recalled. I am sure that there are some comments that I do not recall the exact nature of from that period, as well, but these that are here are the ones that I do recall.

Senator SPECTER. Well, Professor Hill, I can understand why you say that these comments, alleged comments, would stand out in your mind, and we have gone over those. I don't want to go over them again. But when you talk about the withdrawal of a Supreme Court nominee, you are talking about something that is very, very vivid, stark, and you are talking about something that occurred within the past four or five weeks, and my question goes to a very dramatic and important event. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that that is not something that wouldn't stick in a mind for four or five weeks, if it happened.

Ms. HILL. Well, Senator, I would suggest to you that for me these are more than mere allegations, so that if that comment were made—these are the truth to me, these comments are the truth to me—and if it were made, then I may not respond to it in the same way that you do.

Senator SPECTER. Well, I am not questioning your statement when I use the word "allegation" to refer to 10 years ago. I just don't want to talk about it as a fact because so far that is something we have to decide, so I am not stressing that aspect of the question. I do with respect to the time period, but the point that I would come back to for just 1 more minute would be—well, let me ask it to you this way.

Ms. HILL. OK.

Senator SPECTER. Would you not consider it a matter of real importance if someone said to you, "Professor, you won't have to go public. Your name won't have to be disclosed. You won't have to do anything. Just sign the affidavit and this," as the USA Today report, would be the instrument that "quietly and behind the scenes" would force him to withdraw his name. Now I am not asking you whether it happened. I am asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you, that you would remember in the course of four or five weeks.

Ms. HILL. I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say that.

Senator SPECTER. The sequence with the staffers is very involved, so I am going to move to another subject now, but I want to come back to this. Over the luncheon break, I would ask you to think about it further, if there is any way you can shed any further light on that question, because I think if it is an important one.

Ms. HILL. OK. Thank you.

* * * * *

Senator SPECTER. Yes, thank you, Mr. Chairman.

When my time expired we were up to the contact you had with Mr. Brudney on September 9. If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to the committee?

Ms. HILL. Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process for bringing information forward to the committee. And in the course of our conversation Mr. Brudney asked me what were specifics about what it was that I had experienced.

In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process.

Senator SPECTER. Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?

Ms. HILL. Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, a Senate, whether the Senate went into closed session and so forth, It might be that he might not wish to continue the process.

Senator SPECTER. So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?

Ms. HILL. Yes.

Senator SPECTER. Isn't that somewhat different from your testimony this morning?

Ms. HILL. My testimony this morning involved my response to this USA newspaper report and the newspaper report suggested that by making the allegations that that would be enough that the candidate would quietly and somehow withdraw from the process. So, no, I do not believe that it is at variance. We talked about a number of different options. But it was never suggested that just by alleging incidents that that might, that that would cause the nominee to withdraw.

Senator SPECTER. Well, what more could you do than make allegation as to what you said occurred?

Ms. HILL. I could not do any more but this body could.

Senator SPECTER. Well, but I am now looking at you distinguishing what you have just testified to from what you testified to this morning. And this morning I had asked you about just one sentence from the USA Today news, "Anita Hill was told by Senate Staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that quietly and behind the scenes would force him to withdraw his name."

And now you are testifying that Mr. Brudney said that if you came forward and made representations as to what you said happened between you and Judge Thomas, that Judge Thomas might withdraw his nominations?

Ms. HILL. I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate steps in the process. What we were talking about was process. What could happen along the way. What were the possibilities? Would there be a full hearing? Would there be questioning from the FBI? Would there be questioning by some individual members of the Senate?

We were not talking about or even speculating that simply alleging that would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward Judge Thomas might withdraw. That is the essence as to what occurred.

Ms. HILL. No, it is not. I think we differ on our interpretation of what I said.

Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witness speak in her own words, rather than having words put in her mouth?

Senator SPECTER. Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation to what was asked by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation——

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL [continuing]. I understood Mr. Specter's question to be what kinds of conversation did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such a use. We talked about a number of possibilities, but there was never any indication that, by simply making these allegations, the nominee would withdraw from the process. No one ever said that and I did not say that anyone ever said that.

We talked about the form that the statement would come in, we talked about the process that might be undertaken post-statement, and we talked about the possibilities of outcomes, and included in that possibility of outcome was that the committee could decide to review the point and that the nomination, the vote could continue, as it did.

Senator SPECTER. So that, at some point in the process, Judge Thomas might withdraw?

Ms. HILL. Again, I would have to respectfully say that is not what I said. That was one of the possibilities, but it would not come from a simple, my simply making an allegation.

Senator SPECTER. Professor Hill, is that what you meant, when you said earlier, as best I could write it down, that you would control it, so it would not get to this point?

Ms. HILL. Pardon me?

Senator SPECTER. Is that what you meant, when you responded earlier to Senator Biden, that the situation would be controlled "so that it would not get to this point in the hearings"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point.

Senator SPECTER. Thank you very much.

Mr. SPECTER. I thank the Chair.

At page 80, I asked, and I asked nine questions, all of which Professor Hill denied. At page 80:

Question: "Did anybody ever tell you that, by providing the statement, that there would be a move to request Judge Thomas to withdraw his nomination?"

"Ms. Hill: I don't recall any story about pressing, using this to press anyone."

Second question: "Well, do you recall anything at all about being related to that?"

Answer: "I think that I was told my statement would be shown to Judge Thomas, and I agreed to that."

Then the third question: "But was there any suggestion, however slight, that the statement with these serious charges would result in a withdrawal so that it wouldn't have to be necessary for your identity to be known or for you to come forward under circumstances like these?"

Answer: "There was—no, not that I recall. I don't recall anything being said about him being pressed to resign."

Question: "Well, this would only have happened in the course of the past month or so, because all this started just in early September."

"Ms. Hill: I understand."

"Senator Specter: So that when you say you don't recall, I would ask you to search your memory on this point, and perhaps we might begin—and this is an important subject—about the initiation of this entire matter with respect to the Senate staffers who talked to you. But that is going to be too long for the few minutes that I have left, so I would just ask you once again, and you say don't recollect, whether there was anything at all said to you by anyone that, as USA Today reports, that just by having the allegations of sexual harassment by Clarence Thomas, that it would be the instrument that 'quietly and behind the scenes' would force him to withdraw his name. Anything related to that in any way whatsoever?"

"Professor Hill: The only thing that I can think of, and if you will check that were a lot of phone conversations. We were discussing this matter very carefully, and at some point there might have been a conversation about what might happen."

Well, that registered a red light with me, Mr. President, when for the first time Professor Hill said there might have been a conversation.

Then, referring again to the transcript,

My question: "Might have been?"

"Professor Hill: There might have been, but that wasn't—I don't remember this specific kind of comment about 'quietly and behind the scenes' pressing him to withdraw."

My question: "Well, aside from 'quietly and behind the scenes' pressing him to withdraw, any suggestion that just the charges themselves, in writing, would result in Judge Thomas withdrawing, going away?"

"Professor Hill: No, no. I don't recall that at all, no."

And there I point out to you, Mr. President, the flat denial of Professor Hill that any conversation occurred.

Then again, going back to the transcript.

My question: "Well, you started to say that there might have been some conversation, and it seemed to me——"

Professor Hill interjects: "There might have been some conversations about what could possibly occur."

My question: "Well, tell me"—this is the sixth inquiry now—"Well, tell me about that conversation."

"Professor Hill: Well, I can't really tell you any more than what I have said. I discussed what the alternatives were, what might happen with this affidavit that I submitted. We talked about the possibility of the Senate committee coming back for more information. We talked about the possibility of the FBI, asking, going to the FBI and getting more information, some questions from individual Senators. I just, the statement you are referring to, I really can't verify."

Then my question: "Well, when you talked about the Senate coming back for more information or the FBI coming back for more information or Senators coming back for more information, that has nothing at all to do with Judge Thomas withdrawing, so that when you testified a few moments ago that there might possibly have been a conversation, in response to my question about a possible withdrawal, I would press you on that. Professor Hill, in this context: You have testified with some specificity about what happened 10 years ago. I would ask you to press your recollection as to what happened within the last month."

Professor Hill responds: "And I have done that, Senator, and I don't recall that comment. I do recall that there might have been some suggestion that if the FBI did the investigation, that the Senate might get involved, that there may be—that a number of things might occur, but I really, I have to be honest with you, I cannot verify the statement that you are asking me to verify. There is not really more that I can tell you on that."

My question: "Well, when you say a number of things might occur, what sort of things?"

"Professor Hill: May I just add one thing?"

"Senator Specter: Sure."

"Professor Hill: The nature of that kind of conversation you are talking about is very different from the nature of the conversation that I recall. The conversations that I recall were much more vivid. They were more explicit. The conversations that I have had with the staff over the last few days in particular have become more blurry, but these are vivid events that I recall from even 8 years ago when they happened, and they are going to stand out much more in my mind than a telephone conversation. They were one-on-one, personal conversations, as a matter of fact, and that adds to why they are much more easily recalled. I am sure that there are some comments that I do not recall the exact nature of from that period, as well, but these that are here are the ones I do recall."

Then my eighth question to her: "Well, Professor Hill, I can understand why you say these that are here are the ones I do recall."

Then my eighth question to her: "Well, Professor Hill, I can understand why you say these comments, alleged comments, would stand out in your

mind, and we have gone over those. I don't want to go over them again. But when you talk about the withdrawal of a Supreme Court nominee, you are talking about something that is very, very vivid, stark, and you are talking about something that occurred within the past 4 or 5 weeks, and my question goes to a very dramatic and important event. If a mere allegation would pressure a nominee to withdraw from the Supreme Court, I would suggest to you that it is not something that wouldn't stick in your mind for 4 or 5 weeks, if it happened."

"Professor Hill: Well, Senator, I would suggest to you that for me these are more than mere allegations, so that if that comment were made—these are the truth to me, these comments are the truth to me—and if it were made, then I may not respond to it in the same way that you do."

Then my response: "Well, I am not questioning your statement when I use the word 'allegation' to refer to 10 years ago. I just don't want to talk about it as a fact because so far it is something we have to decide, so I am not stressing that aspect of the question. I do with respect to the time period, but the point that I would come back to for just 1 more minute would be—well, let me ask it to you this way."

"Professor Hill: OK."

My question—this is the ninth time: "Would you not consider it a matter of real importance if someone said to you, 'Professor, you won't have to go public. Your name won't have to be disclosed. You won't have to do anything. Just sign the affidavit, just sign the affidavit and this'; as USA Today reported, 'would be the instrument that quietly and behind the scenes would force him to withdraw his name.' Now I am not asking you whether it happened. I am asking you now only, if it did happen, whether that would be the kind of a statement to you which would be important and impressed upon you, that you would remember in the course of 4 or 5 weeks."

At that point Professor Hill consulted with her attorney, which she had every right to do. That does not appear in the transcript, but I asked my staff to go back over the tapes because I recollected the consultation occurred right there.

And then Professor Hill says: "I don't recall a specific statement, and I cannot say whether that comment would have stuck in my mind. I really cannot say that."

Well, the conversation goes on, but my time is just about to run out. I read this at some length to really show a number of things. One is that you have to get right into the specifics of the testimony to understand what she is saying, and a fair reading of nine questions Professor Hill flatly says—I think a fair reading of this is that she says she had no conversation with the Senate staffer that her coming forward might get Judge Thomas to withdraw.

Now, then back in the afternoon session I asked Professor Hill, as it shows on page 203 of the record: "If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to this committee?"

"Professor Hill: Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process of bringing information foreward to the committee. And in the course of our conversations Mr. Brudney asked me what were specifics about what it was that I had experienced.

"In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process."

Mr. President, when I heard that, I was very surprised. And then my next question is: "Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?"

"Professor Hill: Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, the Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process."

And my next question: "So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?"

Professor Hill: "Yes." Flat out, finally, nine questions in the morning, a fair reading, a denial by Professor Hill; then she comes back to it in a way which I have read specifically, which——

Mr. SIMON. Will my colleague yield?

Mr. SPECTER. Absolutely not. I am going to finish this discussion, and then I will be glad to yield.

Mr. THURMOND. On his time.

Mr. SPECTER. I thank Senator THURMOND; on his time and not mine. But I am on an important point. I have been talking to it about 15 minutes. I really want to get to the point without interruption, and then I would like to discuss it with Senator SIMON or anybody else.

I have gone through this, Mr. President, in detail because my colleagues really ought to know the specifics. We have a question of credibility, whether Judge Thomas is correct or whether Professor Hill is correct. And it is not an easy matter, ever, to question anybody about anything. But I would suggest to my colleagues that the questioning of Professor Hill——

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

Mr. THURMOND. Mr. President, I yield 5 more minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. SPECTER. It is not an easy matter to question anybody about anything, really, at any time. But in the context of this case, this was a very important matter and very difficult, and for nine times the question was raised.

I ask my colleagues to focus on the specifics, taking the time that I am allotted, when there are many, many other important things to say. I have not really finished all of the testimony that goes on. I have asked that the record be included up to 208. I have only gone to 204.

Mr. President, I took a look at the testimony last night. I saw some of it on C–SPAN. I was interested to see the tone of it. I did my best to be polite. I think I was. The New York Times said I was painstakingly polite.

But the substance here is what did she say? In the morning, nine questions responding to the way she answered, but always seeking the critical fact as to whether a Senate staffer said Judge Thomas might withdraw, and she said no. Then in the afternoon, and it comes up in the context read, which might be interpreted to be not really responsive to the subject, but that aside, then she says in response to my question, "So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination if you came forward?" Professor Hill: "Yes."

My sense, Mr. President, I say this to my colleagues, who have to decide this issue, is that we have a tremendously difficult task to decide who is correct; who is telling the truth. We have a number of factors that are really hard to evaluate, but some fair indicators of credibility.

But in the context of this matter, on this kind of an important question, I went back the next morning. I did not come to any conclusions; I tried to maintain an open mind, not as an advocate, but in rereading this testimony it seemed to me that there was an intentional misstatement of fact.

I questioned Judge Thomas in a straightforward, perhaps tough manner on the issue that Senator BYRD discussed, when Judge Thomas said he had not watched the testimony of Professor Hill. I said to Judge Thomas: I think you should have watched it; I find that very disappointing. And I was

concerned that Judge Thomas had not watched that testimony.

I was doing the best that I could in terms of trying to get to the facts; that is what I attempted to do. I believe that this transcript, on this change of testimony, has very significant weight on a decision as to the underlying credibility, and what happened between this man and woman. No one is ever going to know. Only two people were present.

I listened to Professor Hill's four witnesses, where she had talked to them before about the incident. I do not have time to analyze that. I found them to be sincere people. I weighed their credibility very, very carefully.

Mr. President, on the totality of this record, on the movement from Education to EEOC, where she could have stayed at Education, after these statements were supposed to have been made, on the series of telephone calls, on the testimony of Professor Kothe about their laughing and talking together, about her driving him to the airport, all in the context, which is different from where you might expect her to want to maintain a professional relationship, more on the personal level, and then especially with nine questions being asked and a denial of any conversation about trying to get him to withdraw, and that change of testimony, Mr. President, in this very, very difficult proceeding, I come to the judgment that the weight of the evidence supports Judge Thomas.

I will be glad to yield for a question.

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

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 15 minutes.

Mr. SIMON. Mr. President, unfortunately this whole issue and the debate that we have had, not just over the last 3 days, is unnecessary if the process of advise and consent had taken place.

I pointed out last week that we had had at least eight instances in this century where a President has appointed someone of another political party. And in addition, Presidents have appointed people who have differed very substantially in terms of philosophy. I am not going to go into all of the detail, but the Republican Presidents who have done that in recent years have included Calvin Coolidge, Herbert Hoover, Richard Nixon, Dwight Eisenhower, and Gerald Ford. I have suggested that balance is needed.

In a column in Sunday's Washington Post, David Broder wrote:

Let the Senate Democratic majority exercise its constitutional authority to "advise" the president by passing a "sense of the Senate" resolution (not subject to veto) setting forth the professional and policy criteria it will use in deciding whether to confirm future court appointees. If Simon's idea of a "balance" on the court is what the Democrats want, let them say so.

I will be submitting a resolution today, Mr. President, which I hope colleagues on both sides can join in approving, which says:

Whereas the Constitution calls on the Senate to give "advice and consent" to nominations to the United States Supreme Court, and

Whereas in recent times the "advice" portion of this phrase has not been exercised by the Senate,

Therefore, be it resolved by the Senate, that it is the sense of the Senate, that

First, that the President, in determining whom to name to any future Court vacancies, should keep philosophical balance in mind, so that the law is not like a pendulum, swinging back and forth depending upon the philosophy of the President; and,

Second, that before a name is submitted to the Senate there should be informal, bipartisan consultation with some members of the Senate on who is to be named to the Supreme Court before a name is submitted to the Senate.

I ask unanimous consent that both the David Broder column and my resolution be printed in the RECORD at this point.

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

[From the Washington Post, Oct. 13, 1991]

A WAY OUT OF THIS MESS

(By David Broder)

"Advise and Consent" is the title of an Allen Drury novel of Washington scandal, sex and politics that occupied the best seller lists for weeks back in 1959. But nothing Drury imagined holds a candle to the real-life drama we have just seen over Judge Clarence Thomas's nomination to the Supreme Court.

Unfortunately, this is not summer escape entertainment. The furious exchange over sexual harassment charges against Thomas had embittered Senate debate and shed a harsh light on the savagery of this era's political battles.

Beyond the passions of the moment lies a constitutional quandary. Our system of government, that marvel of 18th century invention, is not well-designed to operate in the late 20th century environment of persistent divided government.

We have relatively little historical experience with protracted periods when one party controlled Congress and the other held the White House. When this happened in the 19th century, the federal role was much more limited and the stakes in the battle much smaller.

Twice in the Nixon years and three times now in the Reagan and Bush administrations, we have learned that no one's reputation is safe when the president and the Senate, the Republicans and the Democrats, lock horns for control of the Supreme Court. This is not a situation the Founding Fathers ever imagined.

When Alexander Hamilton in Federalist No. 76 justified the Constitution's language conditioning the president's appointive power on "the advice and consent of the Senate," he assumed that it was "not very probable that his nomination would often be overruled." On the contrary, he said that to require "the cooperation of the Senate . . . would be an efficacious source of stability in the administration" of government. Some cooperation! Some stability!

Is there any way to get some sanity and a degree of political accountability back into the confirmation process? Must all such battles be reduced to artful evasion by the nominee and leaks of personally scurrilous material by his opponents?

Suzanne Garment, the author of the timely new book, "Scandal," remarked the other day that "scandal has become the weapon of choice" in confirmation fights in part because it packs such a wallop and in part because it is a handy surrogate for the real issues.

Let me offer what you might call the Rehnquist-Simon alternative to the scandal-saturated battles we are seeing.

Realistically, a Senate and a president of opposite parties must be expected to joust over control of the Supreme Court. The two parties have very different policy agendas for the court, spelled out in their platforms. Abortion is the flash-point issue, but it is far from the only one.

Yet they are squeamish about admitting that it really is a policy fight. So they find other—more personal and more demeaning—grounds on which to quarrel.

Enter, first, Chief Justice William Rehnquist, conservative stalwart. Back in 1959, as a lawyer in private practice, Rehnquist wrote in the Harvard Law Record that "the Supreme Court has assumed such a powerful role as a policy-maker in the government that the Senate must necessarily be concerned with the views of the prospective justices . . . as they relate to broad issues confronting the American people, and the role of the court in dealing with those issues . . . The Senate, as representatives of the people, is entitled to consider those views, much as the voters do with regard to candidates for the presidency or . . . the U.S. Senate."

Listen, now, to Sen. Paul Simon (D-Ill.), staunch liberal. During the hearings on Judge Thomas, Simon pointed out that "at least eight times in this century, presidents have nominated justices who were of a different political party than the president." Conservatives have appointed liberals and vice versa. The Senate, said Simon, should insist on a "balance" in appointments in order to preserve "the stability of the law."

Here is my suggestion. Let the Senate Democratic majority exercise its constitutional authority to "advise" the president by passing a "sense of the Senate" resolution (not subject to veto) setting forth the professional and policy criteria it will use in deciding whether to confirm future court appointees. If Simon's idea of a "balance" on the court is what the Democrats want, let them say so. If they want only appointees that would agree with them on abortion, let them say that. And let them put the resolution to a vote, so everyone going to the polls in 1992 would know that if they retained the Democratic majority in the Senate, they would be giving it a mandate to reject appointees who did not meet those standards.

If Republicans were to win the Senate, the president presumably would face no such constraints. But if the Democrats retain the majority, they could, in good conscience, examine appointees on those "broad issues" of policy Rehnquist mentioned rather than scurrying through personal histories to find some dirt.

That offers political accountability to the voters and fulfills the intent of the Constitu-

tion, as Rehnquist sets it forth. It also gives some hope of elevating the confirmation process from the gutter into which it has fallen.

S. RES. —

Resolved,

Whereas the Constitution calls on the Senate to give "advice and consent" to nominations to the United States Supreme Court, and

Whereas in recent times the "advice" portion of this phrase has not been exercised by the Senate,

Therefore, be it resolved by the Senate, that it is the sense of the Senate, that

First, that the President, in determining whom to name to any future Court vacancies, should keep philosophical balance in mind, so that the law is not like a pendulum, swinging back and forth depending upon the philosophy of the President; and,

Second, that before a name is submitted to the Senate there should be informal, bipartisan consultation with some members of the Senate on who is to be named to the Supreme Court before a name is submitted to the Senate.

(Mr. DIXON assumed the chair.)

Mr. SIMON. Mr. President, I am concerned about what is being done to a witness who reluctantly came forward, and there is no better example than what my colleague suggested. And I say this while he is here, and we have discussed this on the TV program. There is no better example than to suggest that Professor Hill was committing perjury.

The reality is there is not a single prosecutor in this Nation who, reading her full testimony, would suggest there is any perjury. I think as a matter of fact for 7 hours of testimony she was remarkably consistent in what she had to say.

I agree with the distinguished President pro tempore, Senator BYRD, the "wise old lion" of the Senate, who said he found her testimony thoughtful, reflective, and truthful.

Let me just take for a moment the balance of what happened, and I respect those who come to differing conclusions, including my distinguished colleague from Illinois.

But on the side of the judge, it seems to me, are the continued contacts, 11 phone calls over 7 years, a few other things. But psychiatrists say that is not unusual for someone who has been sexually harassed or sexually abused.

What about on the other side? First of all, you have corroborating witnesses that said she talked to them about the abuses several years ago.

Second, is the question of motivation. Here is a reluctant witness, who has no motivation other than doing her duty to this country, who comes forward.

Third, you have the question of details. She provided a great many details that I do not think someone would just make up. If you were going to make up a story, you would make up a story that included physical abuse, physical contact. That was not there.

Her hospital stay, the only hospital stay she had, was caused by stress on the job, stomach pains. She, and apparently her physician, believed it was stress related.

The lie detector. Now, Mr. President, I am not a great believer in lie detectors, but you cannot have it both ways. But let me just add I do not find very many people who do not tell the truth who volunteer to the FBI that they are willing to take a lie detector test, but the FBI asked her whether she was willing to take a lie detector test. She said she was. She then took a lie detector test given by someone who works for the FBI, and then this same administration that asked her whether she would take a lie detector test attacked her for taking a lie detector test. You cannot have it both ways.

And finally—and I am neither an attorney nor a trial attorney—but Senator BYRD's comments about his failure to listen to her charges. I talked to an old trial lawyer—and I know the Presiding Officer is a former trial lawyer—an old trial lawyer who says, "I can frequently tell whether my clients are innocent or guilty because, if they do not listen to the witnesses that are spelling out details of an attack on them, they tend to be guilty."

Now, all these are straws, but I suggest the straws in the wind come down on the side of Professor Hill as to who is telling the truth.

Then, beyond that, what are the other factors? One, that we should have an African-American on the Court. I favor diversity, but let me just add the majority of African-American organizations that have taken a stand have come out on the other side. This morning I called a distinguished former colleague of the House, Barbara Jordan, and I said, "Barbara, if you were voting, how would you vote? She now teaches law at the University of Texas. And she said, "I would vote no," and she explained why. I do not have the time to go into her explanation. I said, "Can I use that on the floor?" And she said, "Of course."

The reality is this nominee's views are either extreme or unknown, and he failed to give answers where I think there is a serious question of credibility. His votes will not be for working men and women in this Nation. They will be for the privileged, who can afford the finest attorneys. That is the reality. I want someone who is going to sit on the Court who is going to speak up for Americans who cannot afford the high-priced attorneys.

Finally, Mr. President, this whole question of the benefit of the doubt that Senator BYRD referred to, I hear this over and over again. This is not a trial where someone is going to be found innocent or guilty. We are not trying anyone. In that case the benefit of the doubt should go to the accused. In this case the benefit of the doubt should go to the people of this country.

Mr. President, we have taken an oath in this body to protect and defend the Constitution. We have not taken an oath to protect our political hides. We have not taken an oath to do all kinds of other things. We have taken an oath to protect the institutions of this country. And I submit to you there is serious doubt if we approve this nominee that we are protecting the institutions of this country as we should.

Mr. President, I reserve the remainder of my time. If the Senator from South Carolina does not have someone seeking the floor, I should consult with Senator BIDEN's staff how much time does Senator KENNEDY need.

Mr. KENNEDY. Fifteen minutes.

Mr. THURMOND. The Senator has approval.

Mr. SIMON. I yield 15 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The distinguished Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the question before the Senate today is not a referendum on the credibility of Judge Clarence Thomas—or of Prof. Anita Hill. The issue before us is the fate of the Supreme Court and the Constitution, now and for decades to come.

It is no secret that I oppose Judge Thomas' nomination.

The extreme views he expressed before his confirmation hearings demonstrate that he lacks a deep commitment to the fundamental constitutional values at the core of our democracy.

It is hypocritical in the extreme for supporters of Judge Thomas to bitterly criticize the conduct of certain advocacy groups in the controversy over the charges by Professor Hill, when it is clear that Judge Thomas was nominated precisely to advance the agenda of the rightwing.

I oppose any effort by this administration to pack the Supreme Court with Justices who will turn back the clock on issues of vital importance for the future of our Nation and for the kind of country we want America to be.

But over the past 9 days, the debate on this nomination has been transformed—and the Nation has been transfixed—by the charges of sexual harassment made by Prof. Anita Hill, and by the Judiciary Committee's hearings into those charges over the past weekend.

With extraordinary courage and dignity, Professor Hill expressed the pain and anguish experienced by so many women who have been victims of sexual harassment on the job.

She described the suffering and the humiliation that a woman encounters when her career and her livelihood are threatened by a supervisor who fills every workday with anxiety about

when the next offensive action and the next embarrassing incident will occur.

The hearings on Professor Hill's charges were exhaustive, and they were difficult and painful for all of the participants—witnesses and Senators alike. But the hearings educated the country on an issue of great and growing significance.

Overnight, as on perhaps no other issue in our history, the entire country made a giant leap of understanding about sexual harassment. That offensive conduct will never be treated lightly again. All women—and all men too—owe Professor Hill a tremendous debt of gratitude for her willingness to discuss her experience, and for the courage and dignity with which she did so.

The most distressing aspect of the hearings was the eagerness with which many of Judge Thomas' supporters resorted to innuendos and scurrilous attacks on Professor Hill for her testimony about her charges of deeply offensive and humiliating actions by Judge Thomas.

They have charged that Professor Hill's allegations were an effort to play on racial fears and racial stereotypes. But the issue here is sexual oppression, not racial oppression.

I have spent much of my public life fighting against discrimination in all its ugly forms, and I intend to keep on making that fight.

I reject the notion that racism is relevant to this controversy. It involves an African-American man and an African-American woman—and, ultimately, it involves the character of America itself. The struggle for racial justice, in its truest sense, was meant to wipe out all forms of oppression. No one, least of all Judge Thomas, is entitled to invoke one form of oppression to excuse another.

The deliberate, provocative use of a term like lynching is not only wrong in fact; it is a gross misuse of America's most historic tragedy and pain to buy a political advantage.

The Senate today is not passing judgment solely on Judge Thomas or Professor Hill. The Senate is making a fundamental statement about our values and our conscience. Make no mistake about it. We in the Senate are also passing judgment on ourselves.

Are we an old boys' club, insensitive at best, and perhaps something worse? Will we strain to concoct any excuse, to impose any burden, to tolerate any unsubstantiated attack on a woman, in order to rationalize a vote for this nomination?

Will we refuse to heed the rights and claims of the majority of Americans who are women but who are so much a minority in this Chamber? What kind of Senate are we?

Because if we cannot listen and respond to this woman, as credible as she is and with the significant corroboration she offers, then what message are we sending to women across America? What American woman in the future will dare to come forward?

There is no proof that Anita Hill has perjured herself—and shame on anyone who suggests that she has.

There is no proof that any advocacy groups made Anita Hill say what she said or made up a story for her to repeat—and shame on anyone who suggests that this is what happened.

There is no proof, no proof at all that Anita Hill is fantasizing these charges or is mentally unbalanced—and shame on anyone desperate enough to suggest that she is.

The treatment of Anita Hill is what every women fears who thinks of lifting the veil and revealing her sexual harassment. Here in the Senate, and in the Nation, we need to establish a different, better, higher standard.

When confronted with all of the evidence that corroborates Professor Hill's charges, Judge Thomas' supporters abandoned the craven charge that she had concocted the story in recent weeks. Instead, they resorted to the meanest, and most unfounded, cut of all—that this tenured law professor, who testified with such grace and dignity, is delusional, that she somehow fantasized the entire horrible experience. That baseless charge is an insult to Professor Hill, and to the millions of American women who have been the victims of sexual harassment.

For too long, persons accused of sexual harassment have responded by charging their victims with being "sick," with "making the whole thing up," with "living in a fantasy world," or that such allegations "amount to nothing more than women taking a passing word in the wrong way."

Calculated slurs of that kind scare other women into silence.

And the greatest irony of all is that the very same people who are now making that irresponsible charge are those who have criticized Professor Hill for not making her own charges sooner.

If we allow these kinds of vicious attacks on Professor Hill to stand, if we dismiss her charges as fantasy or delusion, the message to women throughout America will be a chilling one—suffer in silence or pay a terrible price.

Sexual harassment is an intensely private offense that rarely occurs in front of witnesses. The EEOC itself ruled in 1983 that a claim of sexual harassment can be based on a woman's word alone, without further corroboration. EEOC guidelines make clear that harassment of one woman can constitute an offense, without the need to demonstrate a pattern of such conduct involving other women. Courts have ruled that in cases involving one woman, evidence of similar acts of harassment involving other women may be inadmissible.

The absence of any intent by the perpetrator to harm the victim does not mean there has been no harm. Words and actions may still turn the workplace into an ordeal for any woman who makes a conscientious decision to stick to her career and who decides that the only practical course is to deal with her harasser without recourse to the law.

And in this case, the person charged by Professor Hill with sexual harassment was not only the head of the agency where she worked, but the Federal official with the chief responsibility for enforcing the laws of the United States against sexual harassment.

Judge Thomas and his supporters have pointed with outrage to the harm that these hearings have done to him. But what about the harm that was done to Professor Hill? And I am not talking only about the Senate proceedings that she was so reluctant to set in motion. I am talking about the 2 years of harm that she endured because of this harassment. I am talking about 8 more years of harm she endured because of the silence she was forced to accept in a society that has been hostile to such claims for so long.

It has never been easy for any woman to bring a charge of sexual harassment.

Attitudes are changing in our society. Our national consciousness has been raised by the events of recent days. And the lesson of these changes should be part of the consciousness of the Supreme Court, too.

I wonder, in this day and age, whether women are prepared to sit still while the U.S. Senate puts Clarence Thomas on the Supreme Court of the United States.

The Senate shot itself in the foot last week. Let us not shoot ourselves in the other foot today. We all know what happened last Monday and Tuesday, when Anita Hill's press conference in Oklahoma launched a tidal wave of anger by women across America.

They were outraged, because the Bush administration and the Republican leadership in the Senate stubbornly persisted in trying to force a vote on the Thomas nomination, without even hearing Professor Hill's serious charges of sexual harassment.

Today, therefore, it will not be easy to vote against Anita Hill. All America has seen her face-to-face in their living rooms. Wives are talking to husbands. Daughters are talking to fathers. Sisters are talking to brothers.

They saw what we saw. They saw a courageous woman who seemed to be speaking for all women, a tenured professor of law with a successful career. She had nothing to gain and everything to lose by coming forward. Under great pressure, she testified with surpassing grace and extraordinary dignity. Her testimony was corroborated by four eloquent and persuasive witnesses. Though there is forceful testi-

mony from Judge Thomas supporters, all of them acknowledged that they had no personal knowledge about whether Professor Hill was telling the truth or not.

I believe Professor Hill. I recognize that most of the country is left with doubts about what really happened, and so are many Senators.

There is no conclusive answer—yet. But the Senate has to vote today, and what is the Senate to do?

In my view, Senators who are unsure about who is telling the truth should vote against this nomination.

The Bush administration is urging the Senate to give the benefit of the doubt to the nominee. If this were a criminal proceeding, or even a civil lawsuit, that assertion would be correct.

But the issue before the Senate today is a proceeding of a very different kind. The question is whether Judge Clarence Thomas should be appointed to the highest court in the land, whether he should be entrusted with the solemn power to have the last word on the meaning of the Constitution and the fundamental rights of all Americans.

Throughout the two centuries of our history, many—if not all—of the most important issues of our democracy have been resolved by the Supreme Court. All Americans—men and women—must have faith in the fairness and the integrity of the members of that Court, in their ability to do justice for every citizen, and in their commitment to doing justice.

On a question of such vast and lasting significance, where the course of our future for years to come is riding on our decision, the Senate should give the benefit of the doubt to the Supreme Court and the Constitution, not to Judge Clarence Thomas.

Perhaps there are some Senators who feel that Judge Thomas has overwhelmingly succeeded in disproving Professor Hill's charges. But few Senators and few Americans who watched the hearings would come to that conclusion. America is divided.

If we make a mistake today, the Supreme Court will be living with it and the Nation will be living with it for the next 30 or 40 years. That is too high a price to pay, too great a risk to take. To give the benefit of the doubt to Judge Thomas is to say that Judge Thomas is more important than the Supreme Court.

Surely, whatever the faults and the flaws of the confirmation process, the President of the United States can find another nominee for the Supreme Court who is not under the cloud of having committed serious acts of sexual harassment.

Most Americans are not lawyers. But in their daily lives, they often make critical decisions about themselves, their families, and their futures. They weigh the risks and the consequences, the likely probabilities, and the reasonable doubts.

Few of us would buy a home in a community near a nuclear waste dump, even though the risk of radiation may be extremely small.

We do not allow cancer-causing pesticides in our food supply, even though the risk of illness is vanishingly small.

None of us would stand under a tree in a thunderstorm, because there is a reasonable doubt we might be struck by lightning.

None of us would board an airplane if we had a reasonable doubt about the competence of the pilot.

We do not take these actions, because the action is not worth the risk if we are wrong. The Senate should apply the same test to the nomination of Judge Clarence Thomas.

The Senate has a constitutional responsibility to the Supreme Court and to the American people. The risk of being wrong is too great. Judge Thomas will continue to be a judge, but he should not be confirmed as a member of the Nation's highest court.

Mr. President, I will ask unanimous consent to have printed at an appropriate place in the RECORD the portion of the hearing record that follows the segment read by the Senator from Pennsylvania, which was not read into the RECORD. I will also ask unanimous consent that an article from yesterday's New York Times be printed in the RECORD. I would urge those who have followed the Senator from Pennsylvania's reading of selected portions of that record to draw their attention to those pages, and to read carefully both the entire exchange and Judge Frankel's assessment of the perjury charge.

As I stated in the hearing itself, it is very clear what Professor Hill was saying to Senator SPECTER. She said that no one on the committee staff had suggested to her that Judge Thomas might withdraw quickly and quietly simply because she made an allegation to the committee.

Later she said that the possibility of withdrawal had come up, but in the context of a very different kind of conversation about the various things that might happen down the road. It was one of a broad range of possible outcomes if Professor Hill reported what happened. There is an obvious distinction between the two statements, and it is preposterous to call it perjury, as Judge Frankel clearly states in the Times article.

I ask unanimous consent the transcript pages and the New York Times article be printed in the RECORD.

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

Senator THURMOND. Senator Specter, do you want to proceed?

Senator SPECTER. Yes, thank you, Mr. Chairman.

When my time expired we were up to the contact you had with Mr. Brudney on September 9. If you could proceed from there to recount who called you and what those conversations consisted of as it led to your coming forward to the committee?

Ms. HILL. Well, we discussed a number of different issues. We discussed one, what he knew about the law on sexual harassment. We discussed what he knew about the process for bringing information forward to the committee. And in the course of our conversations. Mr. Brudney asked me what were specifics about what it was that I had experienced.

In addition, we talked about the process for going forward. What might happen if I did bring information to the committee. That included that an investigation might take place, that I might be questioned by the committee in closed session. It even included something to the effect that the information might be presented to the candidate or to the White House. There was some indication that the candidate or, excuse me, the nominee might not wish to continue the process.

Senator SPECTER. Mr. Brudney said to you that the nominee, Judge Thomas, might not wish to continue the process if you came forward with a statement on the factors which you have testified about?

Ms. HILL. Well, I am not sure that that is exactly what he said. I think what he said was, depending on an investigation, a Senate, whether the Senate went into closed session and so forth, it might be that he might not wish to continue the process.

Senator SPECTER. So Mr. Brudney did tell you that Judge Thomas might not wish to continue to go forward with his nomination, if you came forward?

Ms. HILL. Yes.

Senator SPECTER. Isn't that some what different from your testimony this morning?

Ms. HILL. My testimony this morning involved my response to this USA newspaper report and the newspaper report suggested that by making the allegations that that would be enough that the candidate would quietly and somehow withdraw from the process. So, no, I do not believe that it is at variance. We talked about a number of different options. But it was never suggested that just by alleging incidents that that might, that that would cause the nominee to withdraw.

Senator SPECTER. Well, what more could you do than make allegations as to what you said occurred?

Ms. HILL. I could not do any more but this body could.

Senator SPECTER. Well, but I am now looking at your distinguishing what you have just testified to from what you testified to this morning. And this morning, I had asked you about just one sentence from the USA Today news, "Anita Hill was told by Senate Staffers that her signed affidavit alleging sexual harassment by Clarence Thomas would be the instrument that quietly and behind the scenes would force him to withdraw his name."

And now you are testifying that Mr. Brudney said that if you came forward and made representations as to what you said happened between you and Judge Thomas, that Judge Thomas might withdraw his nomination?

Ms. HILL. I guess, Senator, the difference in what you are saying and what I am saying is that that quote seems to indicate that there would be no intermediate steps in the process. What we were talking about was process. What could happen along the way.

What were the possibilities? Would there be a full hearing? Would there be questioning from the FBI? Would there be questioning by some individual members of the Senate?

We were not talking about or even speculating that simply alleging this would cause someone to withdraw.

Senator SPECTER. Well, if your answer now turns on process, all I can say is that it would have been much shorter had you said, at the outset, that Mr. Brudney told you that if you came forward Judge Thomas might withdraw. That is the essence as to what occurred.

Ms. HILL. No, it is not. I think we differ on our interpretation of what I said.

Senator SPECTER. Well, what am I missing here?

Senator KENNEDY. Mr. Chairman, can we let the witness speak in her own words, rather than having words put in her mouth?

Senator SPECTER. Mr. Chairman, I object to that. I object to that vociferously. I am asking questions here. If Senator Kennedy has anything to say let him participate in this hearing.

The CHAIRMAN. Now, let everybody calm down. Professor Hill, give your interpretation to what was asked by Senator Specter. And then he can ask you further questions.

Ms. HILL. My interpretation——

Senator THURMOND. Speak into the microphone, so we can hear you.

Ms. HILL [continuing]. I understood Mr. Specter's question to be what kinds of conversation did I have regarding this information. I was attempting, in talking to the staff, to understand how the information would be used, what I would have to do, what might be the outcome of such a use. We talked about a number of possibilities, but there was never any indication that, by simply making these allegations, the nominee would withdraw from the process. No one ever said that and I did not say that anyone ever said that.

We talked about the form that the statement would come in, we talked about the process that might be undertaken post-statement, and we talked about the possibilities of outcomes, and included in that possibility of outcome was that the committee could decide to review the point and that the nomination, the vote could continue, as it did.

Senator SPECTER. So that, at some point in the process, Judge Thomas might withdraw?

Ms. HILL. Again, I would have to respectfully say that is not what I said. That was one of the possibilities, but it would not come from a simple, my simply making an allegation.

Senator SPECTER. Professor Hill, is that what you meant, when you said earlier, as best I would write it down, that you would control it, so it would not get to this point?

Ms. HILL. Pardon me?

Senator SPECTER. Is that what you meant, when you responded earlier to Senator Biden, that the situation would be controlled "so that it would not get to this point in the hearings"?

Ms. HILL. Of the public hearing. In entering into these conversations with the staff members, what I was trying to do was control this information, yes, so that it would not get to this point.

Senator SPECTER. Thank you very much.

The CHAIRMAN. Thank you, Senator.

[From the New York Times, Oct. 14, 1991]

WHITE HOUSE ROLE IN THOMAS DEFENSE

(By Andrew Rosenthal)

WASHINGTON, October 13.—The fierce Republican counterattack on Anita F. Hill's testimony sprang from high-level White House consultations among dispirited officials who concluded as the new hearings unfolded that the only way to save Judge Clarence Thomas's nomination was to cast doubt on Professor Hill's character and motivations.

When the hearings began Friday, the White House avoided urging the Republicans on the Senate Judiciary Committee to attack because President Bush's aides were split.

Among aides who believed Judge Thomas's account, some thought the gloves should come off and some feared the political dangers of attacking a black woman's character. There were also some aides who could not make up their minds, and a small group that believed Professor Hill, officials said today.

"NEW LEVEL OF DEPRESSION"

But by Friday afternoon, as Professor Hill's damaging testimony continued, the mood at the White House sank to what an official called "a new level of depression," and some advisers feared that the nomination was doomed. The odds on a lunch time bet between two White House aides were 5-to-1 against confirmation.

At this point, a group of Judge Thomas's friends, led by C. Boyden Gray, the White House counsel, and including J. Michael Luttig, an Assistant Attorney General who has been confirmed as a federal judge but not yet sworn in, decided their only course was to pick apart Professor Hill's case even if this involved a direct attack on her character.

President Bush approved the effort, but it was decided that he needed to stand apart from it, officials said, and the White House assembled a team of lawyers from its own counsel's office, the Justice Department and the Equal Employment Opportunity Commission to amass evidence against Professor Hill with the help of Republican Senate staff aides.

The vice chairman of the E.E.O.C., Rosalie G. Silberman, said tonight that she was part of a group that helped to organize witnesses, who had worked with or for Judge Thomas to testify on his behalf at the Senate hearings.

Recognizing Professor Hill's credibility and the impossibility of finding the unvarnished truth, the idea was simply to raise doubts about her story and her character.

WHITE HOUSE STRATEGY

Once the strategic decision to go after Professor Hill had been reached at the White House, tactics were worked out in conjunction with the two most experienced trial lawyers among the Republicans on the Judiciary Committee, Senators Orrin G. Hatch of Utah and Arlen Specter of Pennsylvania. They led Judge Thomas, the main witness on Saturday, through an assault on his accuser's words that escalated throughout the day.

The key points of their attack consisted of:

Zeroing in on references to pubic hair and the adult movie star Long Dong Silver, two small points in a broad and complex story, and arguing that if the origin of these details could be disputed, then Professor Hill's whole story must have been invented.

Pointing out that Professor Hill had given more details of her charges as the hearings progressed as a way of suggesting that she had embroidered her story, but omitting that the additional information was asked of her under cross-examination.

Accusing her of "perjury," a charge made by Senator Specter on Saturday afternoon on the basis of some variations in her answers on Friday to questions about her contacts with Judiciary Committee investigators.

An official at the Equal Employment Opportunity Commission specializing in sexual harassment cases recalled the reference to "Long Dong Silver," officials said, and the specific case was quickly found in a 10th Circuit Court of Appeals decision through an electronic search.

A lawyer at the Department of Justice mentioned that he had recently read "The Exorcist" and recalled a reference to pubic hair floating in gin.

Other officials, working with Republican Senate aides, began looking for internal inconsistencies in Professor Hill's statements that were used as the basis for Mr. Specter's charge of perjury and for the assertion that she had embroidered her story as she went along.

"All of this is not probative, and we know it," an official said. "But the other witnesses on our side will raise particular questions about her motivations and it all fits into the overall pattern we're trying to demonstrate."

Once Senators Specter and Hatch had spent several hours laying down the three main attack lines, Senator Alan K. Simpson, Republican of Wyoming, weighed in with a strongly worded broadside, saying that his office had been inundated with letters and calls from women saying, alleging that Professor Hill had a flawed character.

By Saturday night, the intensity of the Republican attack—coupled with Judge Thomas' accusation that Professor Hill used racist stereotypes against him—seemed to subdue the Democrats on the committee, and initial reviews at the White House were favorable.

MOOD IS PRETTY GOOD

"We have to see how much impact today's witnesses have, but right now the mood is pretty good in the sense that Clarence has been credible enough and there are enough at least potential difficulties with her story that we can make a strong case to Senators that if you were for Thomas before, you have no credible reason to change your view," an Administration official said today, before the committee heard witnesses who corroborated Professor Hill's statement that she had complained to friends as long as 10 years ago that Judge Thomas was harassing her with unwanted sexual discussions.

But there were also denunciations today of the Republican tactics from feminists and advocacy groups and from Democrats like Senator Edward M. Kennedy of Massachusetts, who said Senator Specter's perjury charge was so fabricated as to be dishonorable.

An expert on evidence and legal procedure, Marvin E. Frankel, a retired judge of the Federal District Court for the Southern District of New York, said the question of whether Professor Hill had elaborated her story was a legitimate area of inquiry.

But if analyzed in legal terms, other aspects of the attack by Senators Hatch and Specter represent "a fantastic, far-out approach that really has nothing to do with the issues," Judge Frankel said.

He said Senator Specter's perjury accusation "hit a low level."

"The idea of former prosecutor who said he has tried perjury cases taking a supposed difference between what somebody said in the morning and what they said in the afternoon to say they committed perjury is really below the belt. He has to know that nobody would ever begin to place a perjury charge on that sort of testimony."

The attack strategy developed slowly and out of necessity each step along the way, according to White House aides.

Administration officials said today that the White House's course was shaped at first by Judge Thomas's decision to prepare his own defense without Kenneth Duberstein, the former White House chief of staff, and Frederick McClure, the White House Congressional liaison, who had been advising him.

"The nature of the charges required that," an official said. "When Thomas responded to a personal allegation, it had to be his response."

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The senior Senator from Pennsylvania is recognized for 3 minutes.

Mr. SPECTER. Mr. President, when the Senator from Massachusetts seeks to add additional pages to the transcript, if he heard my statement he would know it is unnecessary. I inserted all of the pages of the transcript.

If the Senator from Massachusetts has anything to say about the facts and the evidence, I suggest to him that, instead of an oration, he deal with the specifics and the evidence. Now it is up to the people who will read the evidence to make a determination about what a fair reading of that evidence is. But I suggest that when the Senator from Massachusetts talks about shame, he ought not to direct it to the argument that there was an intentional misstatement of fact.

This Senator spent virtually all of his time going over that in detail to illustrate the complexity of the matter and how you have to get right down to the syllables and the semicolons to see what was said. And I submit on the basis of what I read, and the totality of the record, that it is plain that any fair-minded person would say a fair reading of that record was that Professor Hill at first denied that there had been any statement by a staffer that Judge Thomas might be forced to withdraw, and then flatly changed that testimony.

We do not need characterizations like "shame" in this Chamber from the Senator from Massachusetts.

One other point, Mr. President, and that it that the women of America should not listen to the Senator from Massachusetts who is trying to arouse their passions on the generalized subject of sexual harassment. This Senator and every Senator decries sexual harassment. This proceeding is not a question of whether sexual harassment exists in this country, because it does. And virtually all of it is unreported and unpunished.

But the message should not go out to the women of America that the U.S. Senate is indifferent to sexual harassment and that if a woman comes forward and offers evidence, that it will be disregarded. This Senator has been at the forefront, with the Senator from Massachusetts, in trying to get a civil rights bill which is designed directly to bear on the issue of sexual harassment. I take second place to no one on that subject.

But when the Senator from Massachusetts seeks to terrify the women of America that they cannot step forward because they will not be properly treated, he is wrong. And I suggest that the only issue in this matter is who is correct, Professor Hill or Judge Thomas. Professor Hill was treated courteously, properly, politely—her corroborating witnesses were carefully examined, and the decision which is being made, at least by this Senator, is on the facts with the weight of the evidence in support of Judge Thomas. I am talking about the evidence.

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

Does the distinguished senior Senator from Massachusetts ask to be recognized?

Who yields time for that purpose?

Mr. SIMON. I yield time. One minute to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I stand by my rejection of the conclusion made by the Senator from Pennsylvania that Professor Hill was guilty of perjury. I expressed my opinions about that over the course of the hearing. I am not going to take the time to do that during this debate. It is all part of the record. And I reiterate, Mr. President—I reiterate to the Senator from Pennsylvania and to others that the way that Professor Hill was treated was shameful; it was shameful.

I yield the remainder to my time.

The PRESIDING OFFICER. The distinguished senior Senator from Massachusetts yields the floor. Who yields time?

Does the distinguished senior Senator from New Jersey ask time?

The Senator from Illinois.

Mr. SIMON. Mr. President, I yield 12 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The distinguished senior Senator from New Jersey is recognized for 12 minutes.

Mr. BRADLEY. Mr. President, before Prof. Anita Hill's story became known, I declared my opposition to the nomination of Judge Clarence Thomas. I did so on the floor here nearly 2 weeks ago.

I based my opposition on his public record, his professional work, his performance before the Senate Judiciary Committee, and my disagreement with President Bush that he was, in the President's words, "the best person for this position."

Mr. President, I ask unanimous consent my full statement made at that time be printed in this RECORD.

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

FLOOR SPEECH BY SENATOR BILL BRADLEY ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 4, 1991

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'd won 14 of 19 Supreme Court cases when he was Solicitor General of the United States, that he'd won 29 of 32 Supreme Court cases when he was General Counsel of the NAACP, that he'd successfully argued *Brown vs. 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 people's 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 vs. 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 were 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 nonsequitur 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, sensitiv-

ity 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 Clarence Thomas—messages that blur the meaning of a vote for or against Thomas. The messages say that Clarence Thomas didn't need government intervention, so why should help be extended to others; that white America has no responsibility for the failure of blacks; that tokenism is the only acceptable form of affirmative action; that racism didn't hold back Judge Thomas—why are other blacks always whining about its effect on their lives; and 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 have struggled with those words. I thought about the 700,000 lawyers in America; I thought about the 10,000 judges; I thought about the 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'd 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 the 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 insightfully she reads her times, how well she knows herself, 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 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 the 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 in the executive-branch as a 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 a real set of 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, Georgia, 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 can't 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 solely individual achievement is a dangerous mistake. I don't 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, of 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 and inspiration, luck (as he says, "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 doesn't 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 reward, 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 vs. Wade*?

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

People who have known Clarence Thomas since his college days agree on one thing. One thing stands out about him. No, not Pinpoint, Georgia—there are Pinpoint, Georgia, 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 important 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 Pinpoint 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 rigidly, reac-

tionary 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've 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 the essence of 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've 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.

Mr. BRADLEY. Mr. President, has anything transpired that would change my vote or my opposition?

The Nation has watched this drama—charges and countercharges—unfold on TV. And although my perspective is limited by race and gender, the events of the last 4 days reminded me that we need more civility in public life and that those who serve deserve some privacy, some statute of limitations.

We have witnessed a distasteful and, on some levels, disgusting set of hearings in the Judiciary Committee. But what was offensive was not only the description of lurid sexual details that children should not hear, but also the way the men in the White House and their allies on the committee chose to wage the battle.

The strategy to deal with Professor Hill, designed by the men in the White House and apparently approved by President Bush, was the ultimate in sexual stereotyping and sly innuendo replete with gross and irrelevant references to the modern cliche of witchcraft, "The Exorcist." The men in the White House set out to say that Anita Hill was a liar—even though they could not prove it, even though four people corroborated her story, and even though she passed a lie detector test. The men in the White House set out to say she was unbalanced—that she had fantasized all she said—even though one person who alleged fantasy retracted the characterization and the second revealed himself as a self-promoting man with no special psychiatric knowledge. Finally, they set out to say she was part of a conspiracy of interest groups, the press, and U.S. Senate staff—all coordinating and keying off each other in a blatant smear—even though no one could explain the motive for her stepping forward or the connection between the groups and her powerful words.

After Professor Hill's credible testimony, the men in the White House decided to blame Professor Hill for stepping forward, even though she did so only at the committee's request. They looked to discredit her in surprisingly crude ways. They said she should have taken notes. She should have spoken out. She should have left her job. She should have filed a complaint. Never mind that the Supreme Court did not recognize verbal abuse alone as a cause for action until 1986. Never mind that only 7 percent of the women who report sexual harassment in surveys actually file a formal complaint. Never mind that under current law Professor Hill would have gained no damages and possibly no final resolution for up to 3 years. She would have gained only the reputation of a troublemaker, who in the workplace, would be shunned in a thousand small ways and unable to move on with a positive job recommendation. Never mind that some of the Senators who said she should have filed a compliant voted against the legislation that gave her a right to complain or have fought against efforts to allow damages for intentional sex discrimination. Never mind all that.

What the men in the White House revealed, through the strategy of attacking Professor Hill's character, was colossal insensitivity to victims of alleged sexual harassment, an insensitivity that flows from the same source that sees a battered wife and says—prove the man did it. What the men in the White House were saying is we would have spoken up, we would have left the job, we would have taken notes, we would have filed a complaint. How could anyone have a sense of vulnerability about going into the conflict of a legal proceeding? How could someone absorb the abuse Professor Hill described and not fight back? How could anyone submerge pain? Finally, what men in the White House were saying is, why can she not have been more like us—we're all gunfighters—our way, the man's way, is the best.

The treatment that the men in the White House gave to Professor Hill illustrates better than a thousand psychological studies why women are reluctant to step forward. It is dangerous. Imagine in another circumstance if she were your daughter? How would you feel? If a woman with her credibility and her courage cannot do it, how can someone else stand up?

Ironically, the man who treated Professor Hill with the greatest respect during the hearings was Clarence Thomas. He was considerate when he spoke of her amidst the anger that he spewed at the committee for his predicament. He refused to offer interpretations of why she had done it. He would not be drawn into character assassination.

On Friday night, Clarence Thomas showed his racial pain and his racial anger for the first time in the confirmation process. It was probably a truer emotion that all the intellectualizing, dodging, and denying that was part of his earlier appearances before the committee. He used his race in a way he had always refused to do. He identified with the shared experience of black suffering and black indignities at the hands of whites. He became stronger and more vulnerable, when his life and reputation were on the line.

Yet he failed to focus his anger. He was right to be outraged about the leak—and whoever is responsible should be punished—but it was Anita Hill, not the U.S. Senate, who made the charges. Should a more thorough investigation have taken place before the committee vote? Yes. Was the leak reprehensible? Yes. Should last week's full hearing have been done in executive session? Probably. But what remains are not issues of process but charges of fact—charges that remain unresolved.

On Saturday, after the Friday night when his racial anger came pouring from his heart, Clarence Thomas offered racial stereotyping as a defense against the charge of sexual harassment. But here he was on thin ice because he had not expressed outrage nor did he even criticize his President's use of the black rapist-murder, Willie Horton, to scare up some white votes in 1988, even though Horton was the ultimate stereotype. Then Clarence Thomas remained strangely silent in a clearly calculated way. "That was just politics," people say. "No big thing—to which I say, everything is politics—including relations between the races and the sexes. And embedded in all politics are moral values to which one cannot be selectively dedicated. In this case, there is the value of recognizing that each distinct human being has a right to his or her own complex individuality and there is the imperative to resist one-dimensional stereotyping as destructive of our common humanity. To be true to your values, you have to speak out wherever you are and whatever the circumstances. You do not as-

sert the moral values only to save your own neck.

During the first confirmation process, Clarence Thomas continually referred back to his politically attractive personal journey from Pinpoint, GA, as if he were a modern candidate repeating his sound bite. President Bush's reaction after listening to the story in Thomas' opening statement was: "I don't think there was a dry eye in the house."

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 consolidation 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.

Maybe now Clarence Thomas will take the hard and deep look at his potential role in American life. Maybe now he will see that if he is confirmed, it was largely because he asserted a strong racial identity and that he owes nothing to the President, who denied race was even a factor in his selection. Maybe having been tested in the crucible of an excruciatingly painful experience, he will be different. Maybe now he will come home. This is only to say that after this weekend, my doubt that in Maya Angelou's words, "Clarence Thomas is * * * young and can be won over again," is a little less but not sufficiently less to change my vote.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. LEAHY. Mr. President, I have the floor, but I will withhold if he wishes to speak on his time.

Mr. THURMOND. It does not make any difference.

Mr. LEAHY. I yield to the Senator——

Mr. THURMOND. You do not have to yield to me. I will get it on my own.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. THURMOND, Mr. President, in my nearly 37 years as a Member of the U.S. Senate, I have always taken a great deal of pride in both this institution and our duty of "advice and consent," I have thought of the Senate as an edifice of integrity, comity, and deliberation—frequently buffeted by the high winds of politics and personality—but standing firm, entrenched in the bedrock of the Constitution and buttressed by the equity of its rules and procedures.

However, as we arrived at the unprecedented decision to reopen these hearings, I have watched this edifice being profoundly shaken. Waves of base sensationalism, prurience, and vicious political mudslinging have eaten away at the very foundation of the Senate and the confirmation process.

I am outraged and ashamed by the perversion of the process which has occurred, and I am profoundly saddened by the damage that has been done to a man of impeccable character, immense courage, and deep compassion—a man many of us have come to respect and admire. If we are to salvage our constitutional role in this instance, Mr. President, we must strip away the hysteria which has surrounded this whole affair and return to the facts.

Before I go further, Mr. President, I would like to commend our distinguished chairman, Senator BIDEN, for his fairness under extremely difficult circumstances. he has a tough job, but he has done it fairly and with respect for all concerned, ensuring that everyone had an opportunity to be heard. The fact that this vote was delayed is no reflection upon him, and once the decision was made to go forward with the additional hearings, he conducted them in a fair manner.

We are here today—one long week since the original confirmation vote was to occur—because someone broke the rules, and it was not Judge Thomas. Clarence Thomas has always played by the rules—working hard and rising from a childhood of poverty in Pin Point, GA, to being chosen by the President of the United States for an appointment to the highest court in the land. Judge Thomas came before this committee believing in the American dream and trusting that he would be treated fairly and with honor and dignity. Instead, as a result of unfounded allegations, he has been subjected to the most humiliating public spectacle I can recall, and his good name has been dragged through the mud.

Mr. President, what I find most disturbing is that someone with access to confidential information who opposed this nomination generated these unfounded allegations—someone who was simply searching for dirt on Judge Thomas. Since this individual or individuals were unable to cast doubt on his ability and qualifications through the normal hearing process, they sought to find some way to besmirch his moral character.

The allegations made by Professor Hill were fully investigated by the FBI and after reviewing that report, I found the allegation to be totally lacking in merit. I say again—without merit. Ms. Hill's account was not directly corroborated by witnesses. No other credible charges of this nature were made and no evidence was found to indicate that this one was based in fact.

Next, confidential information on the allegation and the FBI investigation was intentionally leaked to the media, a clear cut and egregious violation of both privacy laws and the Senate rules. This information was made public at the 11th hour, the weekend before Judge Thomas would have been confirmed by the full Senate. As a result, all Republican members of the Judiciary Committee have asked for an FBI investigation of this incident.

I ask unanimous consent that a copy of our letter to the Acting Attorney General be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 12, 1991.

Hon. WILLIAM P. BARR,
Acting Attorney General, Washington, DC.

DEAR GENERAL BARR: On September 25, 1991, the Senate Judiciary Committee received a confidential report prepared by the Federal Bureau of Investigation. The report concerned the allegations by Professor Anita Hill against Supreme Court nominee Judge Clarence Thomas. Last weekend, all or a part of the contents of this report were apparently leaked either by a member of the Committee or a member of the Senate staff. We are deeply troubled, indeed we are outraged, that the integrity of Judge Thomas has been impugned as a result of this inexcusable leak.

As you know, legislation will be introduced shortly calling for the appointment of a special counsel to the Senate to investigate whether Senate rules prohibiting the unauthorized disclosure of Senate committee reports may have been violated. We understand that the Majority Leader has given his assurance that this legislation will be brought to the Senate floor soon after the Senate votes on Judge Thomas' confirmation next Tuesday.

Unfortunately, that Senate investigation may be limited to violations of its own rules and may be too late to save the reputations of Judge Thomas and Professor Hill.

Therefore, we believe it would be appropriate for the Department to initiate a separate investigation as soon as possible to determine who is responsible for these leaks and how they occurred. In particular, there is reason to believe that these leaks were unlawful under several sections of the Privacy Act of 1974 (5 USC Sec. 552a), including Section 552a(i)(3) (obtaining confidential material under false pretenses).

In light of the foregoing, we request an expeditious investigation by the FBI to be completed as soon as possible.

Sincerely,

Orrin G. Hatch, Charles E. Grassley, Hank Brown, Strom Thurmond, Alan K. Simpson, Arlen Specter.

Mr. THURMOND. Mr. President, in addition, I believe an Ethics Committee investigation is in order.

Since these scurrilous statements were made, Judge Thomas has cat-

egorically and unequivocally denied them, as have others who have known him and worked with him throughout his career. In fact, a number of these individuals—most of them women—have spoken of his active commitment to eradicating sexual harassment in the workplace, and his intolerance for such behavior among his employees. If he was indulging in sexual harassment, why would he have risked bringing attention to it, especially since he was head of the very Federal agency responsible for dealing with offenses of this nature?

During the original confirmation hearings, several individuals mentioned their belief that Judge Thomas had been actively working toward a Supreme Court nomination for the last 10 or 20 years. If that was the case, why would he have been foolish enough to engage in the kind of conduct which has been alleged? It does not make sense.

As I have already said, this committee has heard witness after witness testify to the fact that Judge Thomas is a man of character, courage, and compassion. Even more significantly, prior to this allegation, even those who most bitterly opposed this nominee had nothing—not one thing—to say against his moral character.

Judge Thomas has been through the Senate confirmation process four times before being nominated to the Supreme Court. Nothing of this nature has ever been alleged before.

Mr. President, experts in the fields of civil rights enforcement and psychology say there is no such thing as an isolated incident of sexual harassment. That is to say, if Judge Thomas sexually harassed Professor Hill, he would have harassed others—there would have been a pattern of this kind of behavior. Yet there is no pattern, and no one has been able to establish that this allegation is based in fact. On the contrary, many women who know Judge Thomas and have worked with him have spoken of his kindness, his professionalism, and his commitment to ensuring that the workplace was comfortable and secure for all employees.

I was most impressed by the strong testimony of Judge Thomas' former employees, who spoke of his character and dignified professional conduct. Pamela Talkin, Judge Thomas' chief of staff at the EEOC, said she had never worked with an individual more committed to establishing a workplace free from discrimination and harassment than Judge Thomas. Other women who had worked closely with Thomas gave testimony which was just as compelling. These were women who worked with Judge Thomas and knew him well.

Since his nomination to the Supreme Court, the life of Clarence Thomas has once again been subjected to the most minute scrutiny. The Judiciary Committee has investigated Clarence Thomas thoroughly for over 100 days. The FBI has investigated Judge Thomas. The White House has investigated Judge Thomas, and Judge Thomas has sat through 5 full days of questioning as well as 2 days addressing this particular allegation. He has impressed us all with his intelligence, honor, and dignity. These are the facts on Clarence Thomas.

Now for the facts on Prof. Anita Hill, Mr. President. This is a woman not one of us knows personally and whose background has not been investigated for anywhere close to 100 days. The allegations she has raised are of the most serious kind, and the behavior she described was hateful and disgusting. There is no doubt in my mind that if it was true, it was sexual harassment. Yet her testimony has provided us with many more questions than answers.

If this behavior did take place, why did she wait 10 years—10 years—to bring this charge? Why did she not bring it up to investigators—or even to the media—during Judge Thomas' four previous confirmation hearings? If she was being harassed while working for Clarence Thomas at the Department of Education, why did she follow him to EEOC? Why would she continue to subject herself to these unwelcome advances? Not out of desperation for a job—for, contrary to what she told this committee, she could have kept her job at the Department of Education easily.

In addition, Professor Hill was, and is, an attorney. She must have been well aware there was legal redress available to her if she was being harassed. Especially as an employee of the agency responsible for enforcing civil rights protection, Professor Hill must have been aware of the procedures for bringing such a charge, and for keeping contemporaneous records of such treatment. Why did she not bring charges against this man if he was harassing her?

After leaving the Washington area, why did Professor Hill maintain a cordial relationship with a man who treated her so badly that she had to be hospitalized for stress? Why would she telephone Clarence Thomas "just to say hello," or, even more bizarre, to congratulate him on his marriage? Professor Hill's statements and actions are not congruent. The Judiciary Committee is not capable of discerning a clear motive for Professor Hill to tell an untruth, but I believe that is what has occurred.

It has been suggested that Ms. Hill wished for romantic involvement with Judge Thomas and felt rejected when he was not interested in her. Mr. Dogget's testimony, and that of Mrs. Phyllis Berry Myers, indicates this may be the case.

Some have said that Judge Thomas did not promote Professor Hill to a position she coveted. Perhaps she is being vindictive for what she considers to be a professional slight. In addition, after moving to the EEOC from the Department of Education, she was relegated to a position of less prominence and diminished access to Judge Thomas. Perhaps her ego was bruised.

Professor Hill also told FBI investigators that she had doubts about Judge Thomas' political philosophy, that she felt he had changed his beliefs and that he would not be "open-minded." Perhaps the root of this whole thing is a disagreement over political philosophy. I have been contacted by several psychiatrists, suggesting that it is entirely possible she is suffering from delusions. Perhaps she is living in a fantasy world. Dean Kothe, the founding dean of the school of law at Oral Roberts University, has stated his opinion that Ms. Hill's allegations are not only unbelievable but preposterous and the product of fantasy.

Mr. President, I do not believe any of us can know exactly what Anita Hill's motivation could be for impugning Judge Thomas in this manner. Furthermore, it is not our job to know. It is our job to weigh the testimony presented to us and attempt to discern the truth.

I would like to comment briefly at this point about Ms. Angela Wright, whose name was mentioned in the media after Professor Hill came forward. Ms. Wright freely chose not to appear before the committee to testify, and her statements are worthy of little or no consideration.

Ms. Wright, a former employee at the EEOC, was fired by Judge Thomas for poor work performance and use of derogatory language toward another employee. Previously, she had been fired from another job, and resigned rather than be fired from yet another. Ms. Wright is obviously a disgruntled former employee, and has alleged that another former supervisor was a racist and a fool. Her statements against Judge Thomas are inconsistent and should be totally rejected.

On the one hand, we have Judge Thomas. Many of us know him personally and have great respect for both his ability and his character. He has been exhaustively investigated on a number of occasions and for long periods of time. Prior to this week, he had never been the subject of even a breath of scandal or impropriety. He has been a faithful and energetic public servant, a conscientious and sensitive boss and a loyal friend.

On the other hand, we have Prof. Anita Hill. Professor Hill is not personally known to any of us here on this committee. She has come forward at the last minute with some very serious charges. She has not been fully investigated, and we know nothing of her personal life. Her story is fraught with contradictions. Whom are we to believe? In my view, the evidence is over-

whelmingly on the side of Judge Thomas.

Mr. President, a great injustice has been committed here. The good name of a good man has been tarnished. I do not believe Judge Thomas is capable of the kind of behavior Professor Hill described to this committee, and I do not believe that Professor Hill is telling the truth.

Mr. President, the book of Ecclesiastes in the Bible says every man has three names: One his father and mother gave him, one others call him, and one he acquires himself. Clarence Thomas' parents and grandparents gave him a good strong name, a name he could be proud of. He has earned for himself an honorable name, as a man of integrity and rectitude, and up until this week, that was also the name by which others also knew him.

Now that name, the product of 43 years of hard work and striving for excellence, has been snatched from him and dragged through the mire. We cannot restore it to him in its wholeness. We cannot restore to him his peace of mind or his belief in the fairness of the system. However, we can dismiss these charges against him for what they are—baseless, incredible, inconsistent, and simply unbelievable.

Mr. President, Judge Thomas will be an outstanding member of the U.S. Supreme Court. As I have said on many occasions, his background provides him with the ability to fulfill his responsibilities in an outstanding manner, and he should be confirmed.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Illinois controls 81 minutes; the Senator from South Carolina controls 142 minutes. Who yields time?

Mr. SIMON. Mr. President, I yield 10 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. LEAHY. Mr. President, in the midst of what have been attacks, sloganeering, smears, and innuendoes, many of us during the past few days have tried to make an independent judgment rather than making speeches and waging a political campaign. We were right to do that. We were faced with two diametrically opposed stories.

I keep coming back to the question of what Anita Hill had to gain from making her story known, and the answer is nothing.

Professor Hill presented her disturbing story with dignity, courage, and intelligence, and she maintained an extraordinary grace under the pressure of a political onslaught that was orchestrated by the White House. Thomas' supporters built a case against her on a house of cards made of falsehoods, innuendo, and plain, old-fashioned political smears. She was a perjurer, they said. She might be a spurned woman; she was a bitter bureaucrat passed over for a better job; she was a tool of interest groups who wrote her testimony; her story was concocted at the 11th hour.

Thomas' supporters even did readings from "The Exorcist." They claim that she was perverted, claimed that she was self-deluded, claimed that she might belong in an asylum. The Senators who have described themselves as the defenders of family values came up with every explanation for her testimony except the most obvious—that she was telling the truth.

Professor Hill had nothing to gain in coming to Washington. What she got was a crash course in character assassination. Is it any wonder that she hesitated to come forward—8 years ago or today?

Her experience is an object lesson for women about the risk of speaking out. Her attackers cry out against her for not coming forward 8 years ago, at the same time they maul and harass her for coming forward today.

If anyone needs to know why so many women keep experiences of sexual harassment or rape locked up inside, they need look no further than Anita Hill's 72 hours in Washington.

If the Senate fails to show respect for Professor Hill's testimony, what are we telling the world? What are we telling the 19-year-old waitress who is sexually harassed or the 23-year-old secretary who is sexually harassed by the most powerful man in her company?

If Professor Hill, who is well educated and successful, is treated as though she were mentally ill, what is going to happen to the poor or uneducated victims?

The message will be clear: If you dare to challenge a powerful man, you are going to be crushed. And that is a message that the administration and its supporters should be deeply ashamed to send to this country.

I am saddened that once again race was used as a tool for short-term political gain, with no regard for the destruction that tactic will wreak on our Nation. From Willie Horton to the civil rights bill to Clarence Thomas' claim of lynching, it appears to me that the administration is willing to use race to its advantage time and time again.

Mr. President, I believe Anita Hill. And none of her opponents dared to say directly that Anita Hill was not a very moving and credible person. The corroborative witnesses who testified that Professor Hill told them at the time—at the time—about Clarence Thomas' unwanted sexual advances were unimpeachable, and were not impeached. They had not reason to lie, just as Anita Hill had no reason to lie. Their testimony demolished the White House claim that Professor Hill's story was an 11th-hour fabrication.

Professor Hill testified that Judge Thomas described X-rated movies to her in detail. Judge Thomas and his supporters denied that such conversation was imaginable for a man of his upright character. Dean Kothe, cited just a few minutes ago by the distinguished ranking member of this committee, said Judge Thomas is a man who would only read a book on religion or philosophy. That is the cite that was just used to demonstrate who Judge Thomas is.

But one of Judge Thomas' strongest supporters, Lovida Coleman, admitted to the press last week that Judge Thomas regaled her and other friends with descriptions of pornographic movies while they were students in law school. And we have been presented with no evidence that his willingness to discuss pornographic films was brought to a halt on the day he left law school. If one believes Anita Hill's testimony, as I do, Judge Thomas did not stop discussing such films when he came to Washington.

What of Clarence Thomas? Even if only 10 percent of what Anita Hill has said is true, then Clarence Thomas' categorical denial to the committee—under oath—is untrue.

Every Senator is going to vote on his nomination according to his or her own conscience. Remember, if Judge Thomas is confirmed, he will serve on the U.S. Supreme Court for decades, for life.

Why would Judge Thomas lie? Suppose for the moment that Professor Hill is telling the truth, and it all happened behind closed doors, with no witnesses.

Do men who have committed sexual harassment come out and say, "Of course, I did it"? Most men in that position would say one of two things. Either she misunderstood harmless flirting, or the woman is obviously crazy. Most men caught in sexual harassment do not admit it; they deny it.

Senator SIMPSON quoted Shakespeare the other day. Let me paraphrase from Hamlet: Judge Thomas doth protest too much.

In the battle over motives, let us recognize that Judge Thomas has a simple motive. He wants to join the highest court in the land. Senators on the other side have turned cartwheels to invent a reason why Professor Hill would sacrifice all she has just to give false testimony before this body.

The President sent us a nominee who is not prepared for a seat on the Court. He has asked us to confirm Judge Thomas on the basis of his character. This nomination was a political calculation that it would, notwithstanding the lack of his qualifications, be politically difficult to oppose him.

I disagree. I voted against Judge Thomas because, after reviewing his record and listening to his testimony, I was left with too many unanswered

questions. As I have discussed in detail in my previous statements, I was troubled by his lack of expertise in constitutional issues, by his disturbing flight from his record, by his extraordinary comment that he never discussed Roe versus Wade, by his unwillingness to answer legitimate questions, and by his unwillingness to clarify a troubling record on the fundamental right to privacy. Similarly, I am troubled that Judge Thomas did not even watch his accuser's testimony.

I urge my colleagues to go back to September 10 and look at the whole record to put the harassment incident in context.

The fact that Clarence Thomas pulled himself up by his bootstraps and succeeded in a hostile world is not enough; not for elevation to the Supreme Court; not for a lifetime appointment which could last into the third decade of the next century; not to be a final arbiter of our Constitution and our Bill of Rights.

This weekend, Judge Thomas talked about his loss of privacy, of Government intruding into his private life. He said he wanted his privacy back. I only hope that if he is confirmed as a Supreme Court Justice, he remembers how important the right of privacy is to women in this country.

We have a system of checks and balances, and all Senators have a chance to exercise their role in that system today. To protect the Court, the Framers realized that neither the executive body nor the legislative body should have the power to cast the Court in its own image. We in the Senate play an integral role in this process, and we cannot abdicate our responsibility in the face of this political barrage.

Let us say as Senators, that we step aside from the polls of the moment, we step aside from those who might seek short-term political gain, and we stand up as the conscience of this Nation, for the good of the Nation, not just for today, but for the generations that follow long after each and every one of us is gone.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Texas.

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

Mr. GRAMM. Mr. President, this morning I picked up my mail and telegrams and looked over them. I read one that I think says it all. It is a telegram from Adriana Swanson in Houston, TX. It says in part:

> I was born in Havana, Cuba, but have been a U.S. citizen for over 20 years. The televised Thomas-Hill hearings reminded me more of a Castro show trial than anything I could imagine occurring in a democracy.

Mr. President, the tragedy of this telegram is that most Americans believe that is true. I ask my colleagues. How did it happen? How did the advise-and-consent clause in the Constitution turn into a political referendum about political philosophy?

We have elections to determine the political philosophy of the President. I submit to my colleagues that the people who voted for George Bush in 1988 had every reason to expect that, if he were elected, he would appoint conservative Justices to the Supreme Court. In voting for President Bush, the people determined the philosophy of those who would be appointed to the Supreme Court.

Now what has happened, Mr. President, is that the people who lost that election are using the advise-and-consent clause to try to win what they could not win at the ballot box.

I ask my colleagues who are now searching for ways to repair the reputation of the Senate to realize that the reputation of the Senate has been diminished because, in reality, it deserves diminishing. I say to my colleagues, we ought to be debating about qualifications and about character.

Something is wrong when hundreds of people are sent out, including staff members of Senators and of the committee, not to get a balanced picture of the person, but for no reason except to find something to derail the confirmation—not because of the evidence that is found, but in an effort to deny the President of the United States the ability to appoint people who represent his philosophy, his values, and most importantly, the values of the American people.

I submit that if we should have a Democrat elected President, and I submit that probably will not happen in the lifetime of many in this body, then I would feel the American people have spoken, and I would expect the Democrats to appoint a liberal activist who would legislate hidden beneath judicial robes, without the necessity of being elected. But I would judge that nominee on competence and integrity, not political philosophy, because the American people would have spoken.

I submit that when we get into politics and philosophy, we pervert the process.

We are not going to rebuild the reputation of the Senate until we return to the basic principles that the Founding Fathers intended. The President was elected and people knew when they elected him who he would nominate in terms of philosophy.

It is clear that this process has been perverted in an effort to derail Judge Thomas for the same reason that Judge Bork's nomination was derailed, and that is because people who lost the election do not share the fundamental political values of the President.

We are not going to set this process right until we end the political contest which confirmation has become. I am very concerned that, if Clarence Thomas is not confirmed, every controversial nomination will generate a last-minute political charge—in the best tradition of dirty political campaigns in America—and we are going to repeat this process many times and further diminish the credibility of the Senate.

We can stop this from occurring by confirming Judge Thomas. I intend to cast my vote for him. I hope and trust that he will be confirmed.

Clarence said he has not had a good day since he was nominated. I hope today is the first of many good days to come, for him, for the Senate, and for the American people.

The PRESIDING OFFICER (Mr. ADAMS). The time has expired.

Who yields time?

Mr. BIDEN. Mr. President, I yield 10 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 10 minutes.

Ms. MIKULSKI. Mr. President, a week ago I stood on this floor and called for delaying the confirmation vote on Judge Clarence Thomas to the Supreme Court. I asked for that delay so that the Senate could consider the very serious charge of sexual harassment. I said at that time, if the charges of sexual harassment could not be heard and dealt with in the U.S. Senate, there is no forum in the United States where it would be considered seriously and impartially. The majority of my colleagues agreed with me and supported the idea of an open hearing, and I thank them for that.

What we in the Senate agreed to was a hearing. What I hoped to have happen was it would be a public service, but instead it became a public spectacle. What we and the American public began to be subjected to was an orchestrated strategy to discredit and fault unfairly a citizen who came forward to tell the truth. The same people who gave us the worst of racial stereotypes in political campaigns, the Willie Horton ad, have now smeared Anita Hill.

Much is said about the ruined reputation of Clarence Thomas, but what about Anita Hill? At age 35, a professor of law, a Yale graduate goes back to what? There is much said about her mental health, that she had delusions, had fantasies. Maybe she was deluded into the fact that, if she came forth and was a good citizen, she would be protected. Maybe she had fantasies about the fairness of a process she thought she would get in the U.S. Senate. Well, Mr. President, what we saw was not a hearing, but an inquisition, and there were Republican Senators who rushed into the role of a grand inquisitor.

From the very first day of this nomination the administration and their Senators made a decision to treat the nomination of Clarence Thomas as a

political campaign and not a nomination process. We watched White House handlers and spin doctors mask the convictions and obscure the beliefs of Judge Thomas. He himself refused to answer questions, or gave answers that were simply, plainly unbelievable.

That is the wrong way to decide. When I face a Supreme Court nominee I have three questions: Is he or she competent? Does she or he possess the highest personal and professional integrity? And, third, will he or she protect and defend the core constitutional values and guarantees around freedom of speech, religion, equal protection of the law, and the right of privacy.

I cannot tell if Judge Thomas met that criteria. His handlers and front people kept the true nature of the man from me and my colleagues. That was their strategy in the first set of hearings.

But in the second set of hearings, they adopted the strategy of smash and smear to obscure the facts and attack a woman who came forward. That strategy victimized not only Anita Hill, but victimized the confirmation process, black Americans everywhere, including those who came forward to testify regardless of who they were advocating for—and also victimized the women of this country. The Thomas backers and handlers of Judge Thomas, his campaign consultants, were interested in only one goal, and that was winning and winning at all costs. But in this process nobody has won, and certainly not the American people or the Supreme Court.

The very serious issue before the hearing, the issue of sexual harassment, was of little or no real concern, say the Thomas team. To them it was a problem to be disposed of, not a case to be considered. As a result, a woman was treated in a way that sends a wrong and dangerous message to all women who are subjected to sexual humiliation and want to fight back or think about taking a stand for herself. The message is: Do not accuse anybody no matter what he does or you yourself will become the accused. The message to women is: Our courage in coming forward will be met with suspicion and scorn and with unproven, unsupported charges about your being mentally unbalanced, about your being an opportunist.

Sexual harassment is real, and Professor Hill's reaction to it is typical. Studies indicate that only 1 to 7 percent of women who report sexual harassment ever file those charges. It is common for those women to maintain some contact in order to preserve their careers.

Yes, these hearings have men and women across the country talking and thinking about sexual harassment. That is important. The Nation is going through a very important teach-in on sexual harassment. But I am afraid the Senate is about to flunk the course. I am very concerned that the victim who had the courage to stand up and say, "No, this is not right," has been treated as if she were the villain. This is where the process has failed and I am quite angry and disappointed about it. If you talk to victims of abuse the way I have, they will tell you they are often doubly victimized. First, they are victimized by the event itself and then victimized by the way the system treats them.

My phone lines have been flooded by phone calls from women who suffered similar experiences and have undergone this great trauma. But, Mr. President, my phone has also been ringing off the hook, and I have been approached personally by men, who tell me what it is like to hear the sorrow of the women they love who themselves have been victimized by sexual harassment. I heard husbands talk to me about what their wives endured at work. I have had fathers share with me, swelling up with anger as they talk about how they tried to give their daughters the best education so they could compete in the world only to be battered through sexual innuendo and harassment. And what do those men tell me, Mr. President? They tell me how powerless they felt to defend the woman they loved, against her harasser, or to defend her against the very system she would have to undergo if she filed charges. Those men have told me that often they said to their wives or to their daughters, "Do not go ahead with it. It is just not worth what will happen to you."

I call upon the men of the United States of America now to speak out on the issue of sexual harassment. This is not a woman's issue; it is an issue that profoundly affects men and women. I call upon the men to claim the power that they have, even though they could not always defend the women that they love, to speak out about what it meant to hear their wives and their daughters talk about sexual humiliation and sexual tyranny. I call for the men, wherever they are, to speak up and challenge the thinking that boys will be boys, or that sexual harassment is a laughing matter. I call upon those men to speak out in the workplace, to speak out in the newspapers, to speak out on the talk shows, to speak out in the gym the way they have spoken to me, and I will say to them, "If you speak out and you speak up, it may be too late to prevent what happened to your wife or your daughter, but you will help other mothers and fathers everywhere."

To the women watching this, do not lose heart, but we will lose ground. I know how you feel the sting of all this, how you feel battered and bullied. Speak up to a friend. We have heard in this hearing the advice that, if you are harassed, take good notes, and when you speak up, make sure you are not alone because there will be few there to protect you.

Mr. President, I feel very strongly about this. And I want to conclude by saying we have an opportunity to send a message to victims everywhere that at last in the United States of America the silence is broken as well as our hearts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me say how important it is for the Senator from Maryland to just have spoken and what she said.

I just want to make one point, and it is this: Reasonable people can disagree after listening to all that was said this weekend before the committee, but there is only one thing that I find reprehensible that is going on in some quarters now and because both witnesses came across as credible, very credible and, because Professor Hill came across as so credible, people were left with only one of two choices. She is credible, therefore believe her, or she is credible, therefore say she is crazy.

There is absolutely not one shred of evidence to suggest that Professor Hill is fantasizing; not one shred of evidence to suggest that Professor Hill is not and has not been in total control of all her faculties. There is no shred of evidence for the garbage that I hear—not on the floor, but I have heard in the newscasts floating around—that somehow she thinks she is telling the truth; the only answer we can come up with is she must be fantasizing. I have even heard suggested, one of our colleagues said something to the effect, in holding a paper, saying, "Psychiatrists have a name for it. I cannot think of the name for it, but it happens. It is not unusual, an otherwise truthful woman believing that she is still being truthful engages in conduct of fantasy and it has a—psychiatrists call it something."

It is true. Some psychiatrists, not referring to Professor Hill, talk about such a disorder. But the same number of psychiatrists have written me saying—which would be equally as reprehensible for me to do—"You know, Judge Thomas seems believable, He should be very credible. But you know, people who otherwise have exemplary lives, men who otherwise have exemplary lives—I cannot think of the name of the disease, but, when they have been deprived of their mother and deprived of a father, they sometime engaged in this behavior."

It has even been suggested—I will not mention the name—a well-respected man, a President of a great university in this country, had to recently resign because he engaged in conduct that was so atypical of everything else involved in his whole life. And they say now, "See that is the disease."

No disease on anybody's part that anybody, anybody, has offered one shred of evidence either as it relates to the nominee or as it relates to Professor Hill. So I sincerely hope and pray that we do not spend much time speculating about something of which we know nothing, nothing.

The last point I will make, and I will not speak again today, but it seems appropriate to say it here: I hear and read and remember vividly the phrase of what this is all about is the "lynching of an uppity black man," and this is "a stereotypical attack on a black man."

Well, I think that is preposterous. But if that is true, Mr. President, what are we saying about a black woman, who is as well-educated as the black man in question, who has a better grounding in the law as a tenured professor of the law, what are we saying to her we all acknowledge she sounds incredibly credible? If that is not stereotypical lynching of a black woman, what is? Talk about stereotyping people. To take an incredibly well-educated black woman and conclude, notwithstanding the fact you look at her and listen to her, if you do, and say she appears credible, to say, "But there must be something wrong. She sounds credible. I cannot poke a hole in her story, so there must be something wrong." If that is not stereotypical treatment, I do not know what is. Black women have been on the short end of that for centuries. So I hope we will drop, I hope everyone will drop this stereotypical malarkey.

They are two incredibly accomplished people with significantly divergent stories. It is much more likely that one is not telling the truth than it is that either of them are crazy, or that either of them are victims of racial stereotyping.

I am anxious to hear facts, as I said, and I will yield the floor now. But I hear time and again, I know people on this floor to be reasonable women and men, and reasonable women and men can reach different views.

The American public is divided on who they believe. I am not clairvoyant. I cannot guarantee you who is telling the truth. I formed my opinion based on what I observed. But let us make it clear, Mr. President, let us form our opinion on what we observe, not ridiculous speculation about the mental condition or capacity of someone when not a shred, not a shred of such evidence has been put before the committee or any place I know.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 2 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. LOTT. Thank you Mr. President, and I thank Senator THURMOND for yielding me this time.

The hour is late, and we do have limited time now and this matter has already gone on too long. So, I must cut right to the heart of the decision I have made.

I have not spoken earlier on the floor of the Senate with regard to this nomination for a variety of reasons, one of them being that others needed to talk longer than I felt the need to. But now I feel I absolutely must make a public announcement in the Senate of my own decision, and that it that I am voting for the confirmation of Judge Clarence Thomas.

I want to go back beyond where we are today and talk a little bit about what transpired before the events of the last week. I did not stake out an early position. I wanted to see what happened in the Judiciary Committee. I wanted to hear the evidence in the hearings. And so I listened very closely. I made up my mind to vote for Judge Thomas, and made that final decision on Thursday before we were supposed to vote originally on Tuesday. I did it for these reasons.

First, I looked at the man's background. I am impressed by that because I feel that what he has experienced in his life, coming from Pin Point, GA, and what he experienced going through life and reaching the point he has achieved now, will clearly be an asset for him on the Supreme Court, and that his voice will be an important one on the Supreme Court. So on his background, I thought clearly he brought something to this nomination and to the appointment to the Supreme Court.

On education, clearly he is qualified by his educational background for this position.

And from his experience, I have watched him in this city for a number of years now and I watched him take on difficult positions with a lot of pressure both in his confirmation and the way he handled his job. I think he always handled those jobs magnificently. He has experience in the executive branch and he is a sitting Federal judge, having been confirmed by this body. So by his experience, clearly he was qualified.

And by his character, I have reached a conclusion that he had the judicial demeanor and the character to do this job and do it properly.

As I watched the hearings over the weekend, I was concerned about the allegations of sexual harassment against Judge Thomas by Prof. Anita Hill. The case has brought the issue of sexual harassment to the forefront of American politics. That may be the only positive thing to come from this episode.

I was impressed with Judge Thomas; with what he had to say; and how he said it. I believed Judge Thomas and shared his outrage about how he has been treated in this process.

Now that the hearings are over, we all must make our decisions on the nomination of Judge Clarence Thomas for the U.S. Supreme Court.

Like most of my colleagues, I have been deluged by more than 1,000 calls from the people back home in the past several days. Mississippians, like most Americans, watched these hearings with great interest. More than 90 percent of those who called my offices were convinced that Judge Thomas was telling the truth and many said that they were disgusted with the process.

I would like to quote from a letter that eloquently reflects how many of my constituents have viewed this process. It comes from John T. Larsen of Booneville, MS:

> Gone is sensibility, responsibility, decency, fair play, respect for fellow man and a number of other desirable human and democratic traits. * * * How in the world can the Senate demand standards of others that they themselves would never consider living up to * * * Please confirm Judge Thomas.

Like John Larsen, I am disappointed in the treatment that Judge Thomas has received by the Senate and I urge my colleagues to end this ordeal.

After this vote is over the Senate must review the procedures and process used in confirmation hearings. It is out of control and should be changed. For now though, I urge a "yes" vote.

The PRESIDING OFFICER. The time of the Senator, the 2 minutes, has expired.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Alaska [Mr. MURKOWSKI].

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

Mr. MURKOWSKI. Mr. President, I rise today to express my strong support for the President's nomination of Judge Clarence Thomas to succeed retiring Supreme Court Justice Thurgood Marshall.

While I had previously stated my position in support of Judge Thomas, I did support the delay in the vote on his nomination scheduled for last week. The charges leveled against Judge Thomas by Professor Hill were too serious not to receive a thorough investigation by the Senate.

Mr. President, I have heard from a number of Alaskans and visited with them last week during our recess. Many have gone back and forth during the testimony, but now the hearings are concluded and they are telling me, by a substantial majority, that they favor the confirmation of Judge Thomas by this body.

There have been some positive benefits of this process. It has heightened the awareness of both men and women of the problem of sexual harassment in our society. It is my hope that as a result of these hearings those victimized

by sexual harrassment will be more likely to come forward.

Sexual harassment is a serious problem in our society. I firmly believe that if the charges of sexual harassment against Judge Thomas were true that he should not be confirmed. Having carefully reviewed sworn testimony given over the weekend by Judge Thomas, Professor Hill, and their supporters, I will vote to confirm Judge Thomas for the following reasons.

BURDEN OF PROOF

A central element to our Nation's judicial system is that an accused is innocent until proven guilty. The Judiciary Committee hearings failed to resolve the inconsistencies between the testimony of Professor Hill and Judge Thomas. Under our system of justice the benefit of the doubt must belong to the accused.

I do not know who is telling the truth. The testimony was so contradictory that it seems one of the parties must be lying—fairness dictates that the substantial doubt that exists be resolved in favor of Judge Thomas.

INCONSISTENCIES IN PROFESSOR HILL'S TESTIMONY

As the Nation watched, Professor Hill provided very powerful testimony. However, this testimony could not resolve the several inconsistencies in her story. Professor Hill moved from the Department of Education to EEOC with Judge Thomas in 1983 after the alleged harassment occurred. She maintained personal contact with Judge Thomas after leaving the EEOC. Phone logs show consistent contacts over the last 7 years. Professor Hill waited almost 10 years before making her allegations public. It is also difficult to reconcile with her testimony, a comment Professor Hill made to a colleague at the 1991 American Bar Association meeting that she was pleased that Judge Thomas had been named to the Supreme Court.

JUDGE THOMAS' LIFE HISTORY

Clarence Thomas' life history, his character, and his record are not consistent with the charges made against him. Judge Thomas has had a distinguished career in public service—with the Missouri Attorney General's office, as a Senate staffer, with the Department of Education, EEOC, and on the U.S. Circuit Court of Appeals. Never has there been a hint of impropriety.

Judge Thomas has overcome tremendous obstacles in his life, rising from poverty in Pin Point, GA, to be a nominee for a seat on our Nation's highest court.

Mr. President, I think we must in conclusion recognize no small element of partisan politics is involved in this process. Why did the Democratic Committee staff not pursue this allegation when it was first presented to the committee but then wait until the 11th hour?

Mr. President, I read the FBI report. The trust and confidentiality of the Senate was breached by the committee because Anita Hill was assured her identity would remain confidential. It is my hope that because of these hearings, women who have been harassed will come forward and initiate the necessary action to bring about corrective solutions in our society.

I cannot help but contrast the Judiciary Committee's hearings with the conduct of the Intelligence Committee with regard to the Gates nomination. We have carefully reviewed every allegation of impropriety in open and closed session. No stone has been left unturned—no allegation unanswered.

Unfortunately we see more attack politics in Washington these days, particularly in the Senate confirmation process. To ignore the politics inherent in this process would be naive. However, what Judge Thomas has endured goes beyond the politicization of the process. The goal for some is not to obtain the facts necessary to make wise decisions. The goal is to win at all costs—even if it means breaking Senate rules, smearing people's reputations, and distorting the truth.

CONCLUSION

Judge Thomas has overcome many obstacles in his life—poverty, racism, bigotry. I am confident that with the love and strength of his family and his faith in God and himself, Clarence Thomas will overcome this ordeal as well. Whether or not the Senate and future nominees will be able to endure this perversion of the Senate's advice and consent process, is another question.

I urge my colleagues to support the confirmation of Clarence Thomas to be an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I yield 10 minutes to the distinguished Senator from Colorado [Mr. BROWN].

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 minutes.

Mr. BROWN. Mr. President, the founders of our country provided us with a Government which is unique in history. It is one that is suspicious of concentrations of power. It is one which looks at the nature of men and women and expresses fear about letting any one individual or any one group have too much power. Our Nation has benefitted from those limitations.

Over the last 107 days, we have been reminded why this Nation is so suspicious of concentrations of power. The quest for power can cause some men and women to do things they would never consider under normal circumstances. The mud bath of the Thomas nomination is a prime example.

Today should be a day of joy but it is a day of anguish. A day of anguish for both Anita Hill and Clarence Thomas. To some extent, it is a day of anguish for the American people. The simple fact is this has turned into a campaign of slander—not a quest for confirmation facts.

It is my belief that Professor Hill has been ill-used by this Senate. I want to be specific because that is a serious charge. Professor Hill was contacted by representatives of this Senate in the form of staffers who misrepresented important facts to her.

First, they told her there were widespread rumors about sexual harassment at the EEOC and implied to her those rumors concerned her. In effect, they implied to her that she needed to set the record straight because of what was being said about her. They characterized that situation inaccurately. Professor Hill confirms those characterizations were a fundamental factor in her coming forward.

Second, they ill-used Anita Hill by implying to her that if she would simply sign the statement, then it was likely Clarence Thomas would have his nomination withdrawn. That clearly was not correct.

Third, they pledged to Anita Hill that her statement would be held in confidence. It clearly was not. We should make sure that this never happens again to one who would bring forth information that this Senate needs and ought to consider.

The question we answer today is quite simply what kind of person is Clarence Thomas? Is he an individual who would use this kind of language and treat women with the disrespect that is implied by these charges? Each member has looked at the tapes, reviewed the transcripts and will come to their own decision. At least for this member, the last panel the committee heard from provided the greatest information. It happened around 2 a.m. Monday morning. I think their statements bore directly on the facts which are in question here.

Patricia Johnson, Director of Labor Relations at the EEOC, said:

> Then Chairman Thomas became aware I used profanity in some exuberant exchanges with union officials. Clarence Thomas made it clear to me that that was unacceptable conduct which would not be tolerated.

Mr. President, almost everyone we talked to, when they commented on Clarence Thomas, volunteered that he did not use that kind of language. He did not use it in private or public. That even when he was alone with other men, he did not use that kind of language. And that he actively discouraged others from using that kind of language.

Pamela Talkin said:

> Judge Thomas was adamant that women in his office be treated with dignity and respect and his own behavior toward women was scrupulous. There was never a hint of impropriety and I mean a hint.

She is a former chief of staff for Judge Thomas at EEOC.

A former Senate staff colleague of Judge Thomas, Janet Brown said:

I was sexually harassed in the workplace. Other than my immediate family, the one person who was the most outraged, compassionate, caring and sensitive to me was Clarence Thomas. He helped me work through the pain and talked through the options.

For this member who found himself torn by the diversity of testimony, about this candidate, the heartfelt descriptions of the women who worked with him provided a clear answer. The alleged behavior was totally out of character for Clarence Thomas. It was totally inconsistent with the pattern of behavior he displayed, both in public and in private.

In the process of the hearing, Clarence Thomas testified before us for 7 days. The committee learned a great deal about him. After he was divorced and was a bachelor again, he sold his only car to pay for his son's tuition for school. How many bachelors do you know that would do that? It hardly speaks of a man so driven by sexual desires that he couldn't control himself. It speaks of someone, very serious, concerned more about his child and his child's education than his own convenience or perhaps even his own ability to date.

Each Member will make their own judgments about Clarence Thomas but I submit that if you look at this man, look at his life, his lifestyle and look at his history, that you will conclude he is not the kind of individual to have engaged in these activities. I believe you will conclude that the allegations against him are totally inconsistent with the kind of human being that he has been throughout his life.

Mr. President, I shall cast my vote for confirmation and I will also pray that this trial by mud bath will never be repeated.

Mr. THURMOND. I yield 15 minutes to the distinguished Senator from Washington State.

The PRESIDING OFFICER. Was that 15 minutes?

Mr. THURMOND. Fifteen minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for 15 minutes.

Mr. GORTON. Mr. President, this Senator, together with a majority of his colleagues, announced his support for Judge Thomas' nomination to the Supreme Court before Tuesday last. The events of the last week have presented me with as difficult a reappraisal as it has ever been my duty to make. There is no precedent for the nature and compressed intensity of the debate over the last week in front of the American people or in the minds of 100 Members of this Senate. This situation is unique in that, here, the American people know just as much as we in the Senate know—and have learned it in the same way.

As my colleagues and constituents already know, I had on three occasions spoken in favor of Judge Thomas' nomination to the Supreme Court, most recently on October 4. Professor Hill's allegations that she had been subjected to sexual harassment by Clarence Thomas on a systematic and continued basis, however, forced a thorough and agonizing review of my endorsement, and an analysis of all of the evidence in the most thoughtful and unprejudiced manner of which this Senator is capable.

Standing alone, the allegations, if believed, would almost certainly doom the nomination. The allegations, however, do not stand alone. If Professor Hill's charges are correct, and are known by Judge Thomas to be true, Judge Thomas is guilty of not only of a serious form of sexual harassment, but of perjury as well. Under those circumstances, a belief in the literal truth of the charges carries both the inevitable judgment that his nomination should be rejected, and the conclusion that he should be removed from his present position as well.

With that, let us consider the facts. Those Senators who announced their opposition to Clarence Thomas before these allegations were made had determined to vote against him on other grounds. They need not now decide whether the allegations are true in order to vote against Judge Thomas. But those of us who announced our support for Judge Thomas before these allegations became known must now pass judgment on Professor Hill's charges. The plain truth is that we must make this judgment without the absolute certainty that our judgment is correct.

Ours is an awesome responsibility.

At this point, I believe it vitally important to point out the obvious. This debate is not about the existence of sexual harassment in the workplace, or about its pivotal nature with respect to the workplace and to individual careers. Sexual harassment in the workplace exists. It has always inhibited and demeaned women, and it is perhaps more serious now than ever as women have moved into what were traditionally male occupations, are highly competitive up and down the employment chain, and justly seek to be treated as equals with equal opportunity. But the existence of harassment, in general, is not at issue.

The issue here is whether or not this incident occurred as described by Prof. Hill and, if so, what its consequences should be.

This is not a criminal proceeding; Professor Hill need not convince us as Senators of her version of the truth beyond a reasonable doubt. But neither can we charge Judge Thomas with the burden of proving his innocence beyond a reasonable doubt. Each burden would be impossible to meet, but in the case of Judge Thomas, were we to impose such a burden of proof, we would sentence ourselves never to confirm any nominee who is subjected to a charge of a personal offense which by its nature leaves no clear convincing physical effect. There will always be residual doubt in coming to a decision involving such charge, here in the Senate or in the world outside.

Now, let us consider Professor Hill. She, like Judge Thomas, has reached her present distinguished position from a deprived and segregated background. She has overcome real and difficult obstacles through hard work to become the beneficiary of a magnificent education and of a constantly more responsible and important set of positions in the private sector, government, and in the academic world. There is no easily apparent motive for her consciously to have fabricated these allegations.

Professor Hill has charged Clarence Thomas with a number of incidents of verbal sexual harassment over a fairly extended period of time in the early 1980's, while he held a position of authority over her, in meticulous detail. The language which he is alleged to have used is obscene and disgusting and would rightly have traumatized a considerable less sensitive person than Professor Hill.

She is corroborated, in part, by four friends and acquaintances to whom she related incidents of sexual harassment, either contemporaneously or upon first meeting them, in highly generalized, nonspecific terms. None of those four individuals worked with Professor Hill on Clarence Thomas' staff or knew Clarence Thomas.

I am keenly sensitive to the fact that it is hard for me to see the world through the eyes of Professor Hill. It is impossible for me as a 63-year-old male U.S. Senator to understand the professional pressures she faces. As a result, I have spent much of the last week discussing this issue in general, and Professor Hill's charges in particular, with dozens of women, but with three professional women in particular who have a special sensitivity to such harassment: One a friend, one a member of my own staff, and one my own daughter. I will tell you that I have been affected by these discussions. For example, I considered it relevant that Professor Hill, a bright, Yale lawyer would choose voluntarily to transfer with Clarence Thomas from the Department of Education to the EEOC in spite of the fact that she had apparent job security at the Department of Education. I now do not consider this to be highly relevant. Several professional women with whom I have spoken have indicated that a young woman interested in her career might well, even in the face of harassment, make such a move.

I considered it relevant that Professor Hill failed to disclose any sexual harassment charges during the course

of four confirmation hearings of Clarence Thomas—two for his original appointment and reappointment to EEOC, a third when he was nominated to a position on the D.C. Circuit Court of Appeals and finally, for almost 2 months after Judge Thomas' nomination by the President to the Supreme Court of the United States. Here again my view has been changed. Many women in the work force today do not consider Professor Hill's delay strange given the personal and professional trauma inherent in her coming forward.

Clarence Thomas meets these charges with a vehement and categorical denial that any such incident or incidents ever took place.

A significant number of his closest associates, including several females who have themselves been subjected to sexual harassment expressed their unequivocal belief in his denials. They used their own knowledge and experience with Judge Thomas and Professor Hill to state that such actions are totally inconsistent with Judge Thomas' character and behavior. Several of these associates believe that Professor Hill became increasingly resentful of the fact that at the EEOC she lost her close advisory relationship with Judge Thomas, and became just one of several, perhaps not equal, advisers, and was passed over for a promotion for which she felt herself to be highly qualified.

Weighing against Judge Thomas' statement is his obvious motive to deny Professor Hill's charges, even if they were true.

What actually happened?

With the possible exception of the two principals, I doubt that any of us will ever know the truth, the whole truth and nothing but the truth.

But there is a wide range of possibilities.

It is certainly possible that Professor Hill has described what took place precisely and accurately, and that Judge Thomas has perjured himself in order to avoid rejection and humiliation.

It is also clearly possible that Judge Thomas has told the complete and absolute truth, and that Professor Hill, as a result of real or imagined slights, determined to do what she could to undercut his reputation, and then took advantage of an opportunity presented to her by certain Senate staffers, promising anonymity, to destroy a Supreme Court nomination.

It may well be, however, that the truth lies somewhere in between these two extremes. It is certainly conceivable that Clarence Thomas made comments that were taken as offensive by Professor Hill, but this conclusion does not constitute proof that the specific remarks alleged by Professor Hill were made.

In the ultimate analysis, Mr. President, I prefer to believe that both witnesses have told the truth as they perceive it. I cannot, of course, be certain of this conclusion, but, as is the case with each of my colleagues, I must act with full knowledge only that I can never be entirely certain that I am correct.

Because I believe it is more likely than not that the description of Judge Thomas' Department of Education and EEOC presented by those who knew the two parties best falls closer to the truth than does the picture painted by Professor Hill, and because I believe Judge Thomas otherwise to be well qualified for a position on the Supreme Court of the United States, and because I cannot deny him that position on suspicion alone, no matter how troubling, I reaffirm my support for Judge Thomas and will vote in favor of his confirmation.

While this decision must, of necessity, be my own, I am comforted and supported in reaching it by the fact that most thoughtful Americans and most of my constituents who have followed this affair with riveted attention over the course of the last week appear to have reached the same conclusion. Judge Thomas should be confirmed.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 15 minutes to the distinguished Senator from Arizona [Mr. DECONCINI].

The PRESIDING OFFICER. The Senator from Arizona is recognized for 15 minutes.

Mr. DECONCINI. Mr. President, my thanks to the ranking member for his allocation of time. I could take a lot more than 15 minutes because of the seriousness of this and the time that I have spent on it. We might as well get to the points here that have to be taken up.

We have serious allegations from Professor Hill; they are extremely serious for she alleges that sexual harassment occurred, and the perpetrator, was Judge Clarence Thomas. This harassment, as alleged by Professor Hill, was disgusting, and heinous comments; language that is beyond any bounds of acceptability. Regardless of whether they were said in jest or said to harass Professor Hill. There is no justification for that kind of language, if indeed it occurred.

In my opinion, after witnessing this process, after participating in this process, I believe the results are inconclusive. I do not think anybody can really feel certain, after listening to the testimony, whether one witness is more valid than the other. Claims of sexual harassment are very difficult to prove. As we know in civil law and criminal law, these allegations are extremely oppressive to the individuals, both to the victims and to the accused. They are usually committed only with the two people involved, no witnesses. As a result, its one person's word against the other.

In some sexual harassment cases there may be some physical violence which can be established immediately after the act. We are not talking about physical harassment. We are talking about allegations of verbal sexual harassment made against a judge of the U.S. Court of Appeals.

Most basic in our system is due process. I do not think due process was maintained in the process we went through, whether it was due process for Judge Thomas or due process for Professor Hill.

Professor Hill provided a very compelling and moving description with graphic sexual depictions that would raise no question in anybody's mind regarding the impropriety of the behavior. No. 1, how could somebody forget that or make it up or how could anybody actually say these things to an employee have the courage to continue in life and advance to the EEOC, to the court of appeals, and now to be nominated to the Supreme Court.

Judge Thomas, as we know, categorically denied it. He indicated on Friday and Saturday that this was not the way he ever acted. Persuasive evidence was given by friends of Professor Hill that corroborated discussions of this alleged harassment within the last 10 years.

However, witnesses for Clarence Thomas asserted his decency, his integrity, and his scrupulous standards in the workplace. Scores of former women employees came forward who had day-to-day contact with him and worked with him and said never did he utter a coarse word. As a matter of fact, if anything, they testified he was very sensitive to these issues and fired somebody in one case because a verbal slur was made by that person and inappropriate language would not be tolerated in the workplace.

So there is really contradicting evidence on both sides. Mutual accounts of relationships between friends was gone over and over but no clear picture emerged. As a result, you have to make a judgment on the basis of the evidence presented.

My judgment is based on my background as a lawyer. The burden of proof has to be on the person who is making the accusation. That is our system, and it is a fair system. It does not mean you cannot decide the other way, but you have to apply some type of burden of proof, some type of standard toward the accused.

In civil law, a preponderance of the evidence is the standard. A reasonable person, is the standard that is often applied. While this is not a court of law you still must apply a fairness standard in this situation. The burden of proof is clearly on the accuser, and the accuser in this case was Professor Hill, not Judge Thomas.

Clearly Judge Thomas' reputation—and, as he said, his whole life—was on

trial. It is a basic issue of fairness that he be given benefit of the doubt, if doubt exists.

If you can conclude, that it is clear that Judge Thomas' position cannot be sustained and that Ms. Hill's position can be sustained, I will respect that. I could not come to that conclusion. And based on that, it seems to me that any doubts have to be in favor of Judge Thomas.

Some will argue, "Oh, that is fine; we believe in that individual importance and the doubts, but really the doubt has to be in favor of the public." Well, indeed, that is what the doubt is when it is in favor of an individual.

That is what makes this country so different; our system provides that each individual in our society is above the Government, is more important than any group, and this is an individual you are talking about.

The evidence presented was extensive. We had witnesses on both sides to whom I give a great amount of credibility. I was moved by their testimony, whether it was on the side of Professor Hill or on the side of Judge Thomas.

We had people who worked closely with Professor Hill at the EEOC, and we had those same people who worked closely with Judge Thomas who said it could not have happened.

Well, we know it could have happened because they were not with Judge Thomas and Professor Hill all the time. However, they were there. They would have seen a pattern. I think a pattern would have emerged here and we would not have just one accuser. Yes, there was another person, who had been fired by Judge Thomas, who came forward with an affidavit. However, she withdrew her request to testify. I will let that rest for whatever it is worth.

Professor Hill testified that she feared that the Department of Education would be abandoned, that there would be no job for her. That was clearly refuted by the fact that she knew when she left her law firm and went to the Department of Education that Ronald Reagan had already been elected. He had made those speeches so it was very clear. Ms. Berry testified that she knew when she took the job at the Department of Education in fact she had a schedule A job, which meant that she had job security. Professor Hill could not be removed without cause. So she had every reason to know—she was a lawyer—what her rights were. And yet she chose—to move on with Judge Thomas to the EEOC. But she did it after some horrendous things supposedly had taken place.

We saw the former dean of Oral Roberts Law School, Charles Kothe, come and talk to us of the high regard he had for Professor Hill and how he was employed to do a special assignment for the EEOC Chairman, then Clarence Thomas, and how he invited both of them to come to his home for dinner and breakfast and how there was a congeniality here, a friendship here, a "joy" was his actual word. He characterized it as a time of enjoyment, exchanging humor, and stories. Then Professor Hill drove him to the airport, to show off her new car. Professor Hill continued to stay in contact with Judge Thomas. She made numerous calls to him after she left the EEOC.

So these statements represent only to me that there are contradictions here that you just cannot reconcile. I cannot. I cannot reconcile them. I come back to what is a fair standard and to me a fair standard here has to be the fact that the doubt has to go in favor of Judge Thomas.

The committee did, however, hear from witness after witness, friend after friend, and I think anybody here could make a case, for one side or the other.

I questioned whether there was a dark side of Clarence Thomas. Yet, how could he work with all of these people for so many years and not be detected—it is a little unbelievable.

In talking to lawyers who prosecute and defend these cases, if there is a pattern of harassment, they settle the case. If there is not a pattern, then they are prepared to defend the accused and go all the way.

I think that is clear here—that there was no pattern. Clarence Thomas did not have a pattern of this type of language or behavior.

Many women believe that men just don't get it. I have listened to women all my life, to mothers, to daughters, to sisters, to wives, to friends, and to colleagues. I understand, I think, as best as I can—I cannot put myself in the mind of a woman and really feel how they must feel with that kind of abuse, from someone of the opposite sex.

I think it is important that we try our best to be sensitive, and I have done my best in my lifetime to do just that.

The issue here is a power in the workplace, we are told. The issue here is abuse, and the quiet desperation of the victim. If you are not a woman, you cannot fully understand this, you cannot really appreciate it. I agree that men cannot identify with this.

So what do you do? You listen to your mother when she tells you as a young boy, a young man, and as a law student about sexual abuse that occurred to her. When she was 22 years of age, she lost a job. She got a pink slip because she rejected her boss' sexual advances. Is that something you ever forget when your mother tells you that? I know that this Senator will never forget it.

I have had women tell me of these problems when I was the county attorney of Pima County. I set up one of the first national programs to counsel rape victims before, during, and after trial. I knew very well having talked to rape victims and interviewed them how distraught they were, and how difficult this process was.

On the Senate floor my record has to speak for itself. I have supported women's issues because they are right issues.

The Civil Rights Act that we will take up later is directed, I believe, primarily toward women. I challenge President Bush to veto it again.

I think for all of us our awareness of sexual harassment has been heightened. That may be the single good thing that comes out of this awful situation. At no time in our Nation have people been so focused on sexual harassment than right now. I hope we will see more hearings, I hope we will see legislation. I would like to see a process, that would include Congress, where people could file a complaint where there would be a closed, quiet review of it, and, only if absolutely necessary be made public presentation.

Let me say regarding the distinguished chairman of the Judiciary Committee. No one has stood up for the rights of individuals, in my judgment, any greater in this body than the Senator from Delaware. This allegation against Judge Thomas has been difficult to resolve.

Senator BIDEN has been criticized for not making this allegation public before. However, everyone must understand that Senator BIDEN protected a person's confidentiality, as he should have.

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

Mr. DECONCINI. I ask for an additional 3 minutes.

Mr. THURMOND. Mr. President, how much time has he used?

The PRESIDING OFFICER. He has taken 15 minutes.

Mr. THURMOND. I yield 3 minutes to the distinguished Senator.

Mr. DECONCINI. I thank Senator THURMOND.

Senator BIDEN said, fine, we will take the information, but we can't investigate this without giving the accused the opportunity to respond to the charge.

The Judiciary Committee did not go out and seek Ms. Hill. She came to us. Senator BIDEN finally concluded that, if you want to give your name, if you are willing to express yourself, yes, I will take it up in a closed manner with those members. She did that. And he did that. He told us all.

We sat there on the 27th of September. Everyone of us, at least on the Democratic side, having had available, and I presume read, the FBI report, having been briefed by a thoughtful chairman who took his time—to go over it at great length with me and answering questions, and giving me his view. Then we all voted. There was not

a single person who stood up and said, let us hold this over so we could discuss it in executive session.

That would have been the time to delay the vote and expand the investigation.

I must say that I accept responsibility for not requesting more time to investigate this matter. However, after extensive hearings, I maintain that the claim cannot still be substantiated. Those who opposed him sat there like I did and did nothing, let it go, indicating, I guess, that they did not find it to be that serious.

When it comes down to the final judgment here, for all of us, I believe that Judge Thomas should be confirmed. He will not have been my choice. But the man does not deserve to be punished for something that is inconclusive, and that is what we would be doing to deny this man this appointment.

I thank the Chair. I thank the Senator from South Carolina.

Mr. BIDEN. Mr. President, I thank the Senator for his nice compliments.

I now yield 7 minutes to my friend from Tennessee.

THE PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I thank the distinguished chairman.

I rise today with no expectation of shedding new light on the ultimate proof of the question that is before us.

The compelling events this past week, I think we would all agree, have reached into the deepest recesses of the human heart. In this bitterly personal matter I do not believe, frankly, that the U.S. Senate can do final justice by Clarence Thomas, and I do not believe that we can do final justice by Anita Hill. The tools and procedures of this body simply are not delicate enough, or precise enough, to resolve individual human conflict.

We are a policymaking body, established to seek the country's best interests through broad policy decisions. And I would say to my colleagues that is precisely what we must do with this nomination now before us.

Yes, the emotions have been released, but we cannot be governed by them. The Nation has been gripped by deepest passions, but these passions cannot be allowed to control what we do here today. We must decide, in the clear light of day, what is right for our country. That is the question. Then we as U.S. Senators are called upon to answer today in fulfilling our duty and our responsibility.

We are not judging a criminal case. We are not seeking to determine individual guilt or innocence. We are fulfilling our solemn obligation under the Constitution to advise and consent to a nomination to the highest court in this land, a third coequal branch of the Government of the United States.

I do not need to remind anyone that this is a lifetime appointment we are talking about. There will be no second chance in this case. The standards of judgment that we exercise, must be the very highest that we can impose.

Mr. President, concerning the lurid aspects of this nomination, I think there is little left to say. In fact, far too much has been said already. We have had what I characterize as shoot-from-the-hip charges of perjury. We have had dark allusions to unstated proclivities. We have had ventures into amateur psychology, and I say quite frankly that these are not in the Senate's finest tradition. Frankly, I am relieved to return to a plane of discourse with which we are more familiar and to which I think we are better suited.

With respect to the charges themselves, there is no decisive proof. Some are absolutely certain they knew what went on 10 years ago. Frankly, I can forthrightly say that I do not have any corner on the truth in this matter. But I do have some very profound doubts. I do have some very real fears. There is no certainty in a matter of this magnitude. If we separate out the emotion, if we are honest with ourselves, in the final analysis we simply cannot be sure. We are compelled to construct our judgment on the basis of doubts.

Before the events of last week, many of us had, frankly, serious reservations about the qualifications of Judge Thomas to serve on the Supreme Court at this point in his career. I have been concerned that Judge Thomas does not have broad legal experience, and I speak as one who practiced law for 15 years before coming to this body. I have been concerned that he did not exhibit a profound grasp of the complexities of constitutional law. The truth of the matter is that he has engaged only slightly in the private practices of law and has extremely limited courtroom trial experience. He has never taught law. He has never written extensively about the law. He has been on the bench for slightly over 1 year, the youngest member of the U.S. Court of Appeals.

Frankly, the absence of seasoned experience, coupled with an apparent lack of full legal maturity raises doubts in-and-of themselves, Mr. President, about this nominee's fitness for the highest judicial office in this country.

With respect to Judge Thomas' legal philosophy, there is little more than a thin record of contradiction and evasion. Questions were not answered during the confirmation process, I suppose, under the guidance of White House handlers. Judge Thomas backed away from any explicit statement of his previously held opinions. In fact, he distanced himself from virtually all points of view regarding the most contentious legal questions of our day.

Once again, Mr. President, the result is doubt, doubt about the quality of Judge Thomas' legal preparation, and I am sorry to say, doubt about his candor. Judge Thomas has apparently sought once more, with the assistance of the White House, to build his case on character, on his totally admirable struggle to rise from poverty—we all admire that—against great odds, to a distinguished position in this country as a judge on the court of appeals. No one, Mr. President, can take away the nobility of that achievement from Clarence Thomas. The events of last week do not, in my view, toss onto the ash heap a distinguished career in public service. But, Mr. President, when you look at the record, there are real doubts.

Mr. President, we are deciding whether to send Clarence Thomas to a lifetime appointment to the highest bar of justice in this land. There are doubts, doubts about the nominee's legal experience, doubts about his legal maturity, doubts about his legal theory, and now, sadly, doubts about his character.

I ask quite sincerely: Is it in the country's best interest to lay those accumulated doubts aside? My own conclusion is that it is not. I say to my colleagues that, as hard as the judgment is, we have to err here on the side of prudence and caution.

Deep wounds have been opened in this country. I wonder if these wounds can be healed if we allowed a cloud of doubt to hang over the highest court in this land. I simply do not think we can take that risk, and for that reason, Mr. President, I shall cast my vote against Clarence Thomas here today.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield one-half minute to the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, today I will vote in favor of the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. In earlier statements on this subject, I stated the reasons why I thought he was qualified to serve as an Associate Justice of the U.S. Supreme Court. Those reasons have not changed.

I observed some of the testimony of the witnesses at these recent hearings of the Judiciary Committee, and I reviewed the hearing record. I am not sure we will ever know all the facts that are relevant to the accusations that were made by Anita Hill.

It seemed to me that the hearings were not conducted to ascertain the facts. They were designed and managed to discredit Judge Thomas and to satisfy those who were opposed to his confirmation.

However this vote turns out, I urge the Senate to consider carefully how seriously this institution has been damaged by this episode and resolve to ensure in the future that the process of confirmation will be characterized by fairness to those nominated and to witnesses as well.

Mr. THURMOND. Mr. President, I yield 2 minutes to Senator CRAIG.

Mr. CRAIG. Mr. President, like many Americans, I spent a good number of hours last week and this past weekend monitoring the Judiciary Committee proceedings, reviewing the evidence, and trying to decide how to vote on the confirmation of Judge Thomas.

But something else fundamentally important has happened in this country: The beginning of a necessary and important debate about sexual harassment, the protection of employees, policies, if they exist or not, and how this Nation should handle them. I would have to tell you that I did not, until this morning, have a sexual harassment policy in my office here or in my offices in Idaho.

That is now being corrected today. And in the course of the last 4 days, there has been a rising of national consciousness of tremendous significance. We have learned that sexual harassment is real, that it comes in a variety of forms, and that it has happened to thousands of Americans, men and women alike.

I hope we have learned a few other things, Mr. President. I hope the American people have learned that this is indeed a serious matter, serious enough to stop the U.S. Senate dead in its tracks, to reverse, and to begin to hear again charges and to examine those who are charged and those who are accused. We did that, and for hours that occurred, Mr. President.

Today, we have an accuser who has tried to make a case against Judge Clarence Thomas. I am one of those who believe she failed.

I simply do not believe that Anita Hill proved her case against Clarence Thomas. And in this system—although it is not a court of law—our American sense of fairness requires that an accuser has the burden of proving her accusations.

This process has not revealed any new reason for me to vote against the confirmation of Judge Thomas—and so I reaffirm my previous support for him. As I have said before, Judge Thomas is an extraordinary man, highly qualified as a member of the bar and bench, and possessing the kind of temperament that will serve America well on the Supreme Court.

In short, I will vote to confirm.

Mr. President, if the Senate does not confirm this nomination, we will have failed the American people—those people who are loudly registering their support for this man.

But I think the Senate will do the right thing. I think we will confirm Clarence Thomas. And by our vote, we will be signaling to Judge Thomas and his supporters that he is vindicated of these charges and is entitled to take his seat on the highest court in the land, with all the dignity and honor that office entails.

I must also add my voice to the others who have called for an investigation of the breakdown of the judicial committee system. I commend our majority leader and Senator DOLE for pledging to follow through on this very important matter.

The PRESIDING OFFICER (Mr. SANFORD). Who yields time.

Mr. THURMOND. I yield 20 minutes to the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I appreciate the seriousness of this particular nomination process.

Mr. President, I have been interested in comments about the White House dominating the strategy on this side. Anybody who knows Senator SPECTER knows he does his own legal work and nobody dominates what he does. Does anyone assume that all these battles I had in the past have been dominated by other people?

The fact of the matter is that for anybody who believes that, I know a bridge up in Brooklyn that I will be happy to sell to them with the help of Senator KENNEDY.

Mr. President, I also want to join in the comments of Senator DECONCINI about our chairman. Mr. President, the way these processes work—and the process would work well if there was not so much influence from the outside—is that if an allegation comes in, the chairman then notifies the ranking member. In this case they both agreed to order an FBI check—it was an extensive check, the FBI did a good job—and then they brought it back and they felt they should notify the Members. Senator BIDEN notified everybody on his side. Nobody failed to have an understanding of what was going on. And he did what was right there.

These FBI reports contain raw data. You get everything from enemies to nuts, although in this particular matter it does not appear like that FBI report had any of those factors. They make a value judgment about whether they make the matters public or call an executive session, but that would have been the way to go.

If anybody on that committee before that committee vote had wanted an executive session, they would have gotten it. If anyone who wanted or desired to put this matter over for 1 week he had an absolute right to do it. If anyone had said in that open markup that, "I have read the FBI report" or "I have heard of the FBI report" or "I have been briefed on the FBI report," "and I am concerned about this allegation of sexual harassment; I think we need public hearings," I do not think there would have been any question they would have been listened to.

But there was a judgment made, as there is in many of these things, that a sexual harassment allegation 10 years old with all the difficulties that this case had and especially where the accuser had requested confidentiality.

The value judgment was made, and any Senator could have overturned that judgment.

Senator BIDEN did everything that he should have done, and so did Senator THURMOND. I have to tell you, their decision joined in by the rest of the committee was a valid decision under the circumstances; the alleger did not want her name used.

But someone on that committee breached the rules, waited until after that vote, and then leaked these matters to the press and did great harm to two, I think, basically good people. And both of them have been smeared in the process, and all because of a political motivation—and I do not think anybody could conclude otherwise—of the person who did this in full violation of the rules of ethical responsibility and of just good basic decency and fairness.

And Clarence Thomas has been smeared. And anybody that does not believe that just has not listened to the facts. And, unfortunately, Professor Hill has not come out of it well either.

Mr. President, I just want to tell you that I am very concerned about sexual harassment and those charges. As ranking member of the Labor Committee, former chairman of the Labor Committee, I have to tell you that this issue is something that we overview and we take seriously. And it must be taken seriously. And one of the good things that has come out of this, I think, is that everybody has a heightened awareness and hopefully a heightened sensitivity to these issues.

I have 3 daughters that I love very, very much, and 3 sons, and I have 9 granddaughters and 3 grandsons—12 grandchildren. I do not want any of them to have to face the types of sexual harassment that we have heard alleged since we have started to hear these matters.

Mr. President, I am extremely concerned about them. And it is good that maybe all of us have a heightened sensitivity. I have listened to people all over this country, men and women, express their concerns about this issue.

It is easy for all of us to say that we do not like these things to occur. But, Mr. President, they are occurring. They are occurring in tremendous quantities around the country. Many people are not sensitive to them or have not been up to now.

Mr. President, I have known Clarence Thomas for 11 years or thereabouts. I have personally participated in all five of his confirmation processes before the Senate, all five of them. I presided over three of them, his nomination as Assistant Secretary in the Education Department and both of his nominations to the Equal Employment Opportunity Commission. I saw people raking over everything to try and hurt him then. And they were tough confirmations, at least the latter two.

And then I have sat in on, of course, his confirmation before the Judiciary Committee to the Circuit Court of Appeals for the District of Columbia. And I have sat in on his confirmation throughout this process.

This man's life has been thoroughly scrutinized. He has been watched over, because many people on the far left have hated having him as Chairman of the Equal Employment Opportunity Commission, even though he has done a remarkable job. A job so well done that the Washington Post itself complimented him for it. It was not perfect, but it was darn good, and better than anybody who preceded him.

I am telling you, and everybody in this country and everybody that listens or everybody who sees this or reads this, that Clarence Thomas is a honorable, decent, wonderful man. And I think if you look at the fact that at one point he was so poor he had had a divorce, or was in the midst of divorce, and he sold his only car to help keep his son in school. That does not sound like a man on the prowl, or a person who does not have good values to me.

He has tremendous values and everybody, everybody, who has worked with Clarence Thomas, or knows Clarence Thomas, or has a relationship socially with Clarence Thomas knows he is a good man, everybody, that is, except this one woman and some others, one or two, did not come forth and I think would not come forth and rightly so.

This man is a decent human being whose life has been really wronged and really hurt because of a process that broke down because of at least one dishonest person who sits in this body, the greatest deliberative body in the world of only 100 people.

And his life, though not ruined by any stretch of the imagination, has been severely harmed.

Now it seems to me that all of that lapsed time, and all of that service to the Federal Government, and all the good things he has done should not be swept away because of one unsubstantiated set of allegations that really do not stand up, that were 10 years old, more than 9 years after the statute of limitations expired. We have a statute of limitations in order to stop people from bring up charges years thereafter—so they have to bring them within a reasonable time or eat them; so that they have to live within that statute and get these charges made; so that the problems can be corrected; so that if the individual does not realize that he or she is committing sexual harassment that individual can be informed of it; and so that such actions can be stopped and recompense can be brought. And that is what we all wish had been done here.

But more than 9 years after the statute of limitations expired? Small wonder that Senator BIDEN and Senator THURMOND and virtually everybody on the Committee agreed, well, these are serious, but let us get some credibility to the process.

And they were at the last minute. She did not want her name known. The committee knew about them, and the vote was still 7 to 7. And I do not think one of the seven voted against him because of those allegations at that time.

Mr. President, I would just like to mention a few questions that I think anybody who looks at this will have to ask. I think these questions are serious and I am only mentioning a few. There are others that I think people who have watched this process and have listened to the testimony could come up with.

No. 1, why did she wait 10 years? This was a law graduate from one of the great law schools of this country working in the very area that overviewed these problems in both the Department of Education and the Equal Employment Opportunity Commission. Why did she wait 10 years? And why should it suddenly arise on the weekend before the final vote was to take place?

No. 2, why did she not raise this issue in five confirmations of Judge Thomas—five confirmations here in the Senate? These are important. Everybody knows it. Everybody knew that Clarence Thomas was on the fasttrack when he came up for the Circuit Court of Appeals for the District of Columbia—everybody knew it—the fasttrack to the Supreme Court. Everybody knew that a great Justice was getting elderly and probably would retire and that this man was a likely pick.

No. 3, if Judge Thomas was harassing her at the Department of Education and saying these vulgar, sexually explicit things to her, why did she not complain either to some official at the Department of Education or to some official at the Equal Employment Opportunity Commission, as an attorney, graduate of the Yale Law School? As I watched her comments last night where she said she thought it was her duty to come forth I could not help but ask: Why was it not her duty closer to the time when the alleged facts occurred, if they did occur?

And I am telling you, I do not believe they occurred. I believe she believes they occurred, but I do not believe that they did.

No. 4, if she felt uncomfortable going to the appropriate officials at the Department of Education or the Equal Employment Opportunity Commission, then why did she not confide in Gilbert Hardy of her old law firm who put her in touch with Clarence Thomas to begin with? Why did she not solicit his advice and his assistance?

No. 5, if Judge Thomas was harassing her at the Department of Education, why did she go to the Equal Employment Opportunity Commission with him no more than 2 or 3 months after the alleged harassment took place and possibly only 1 month after she says the last incident occurred?

No. 6, if she was uncertain about her ability to stay at the Department of Education, why did she not make any inquiry with the designated replacement of Thomas who came on board while she was still there? That would be a natural thing anybody would do: "Can I stay? Are you willing to consider me?"

No. 7, if she did not want to talk to that designated replacement, then why did she not call anyone in the personnel office or anywhere else or anyone else to find out what her rights were at the Department of Education?

No. 8, if she left the Department of Education in 1982 because she feared the Department was going to be "abolished," why did she leave a lucrative private sector job just a year earlier to work in the same Department? To the extent there was any risk at Department of Education, was going to be abolished, that risk was greater in 1981 than when she left in 1982.

No. 9, while she was with Judge Thomas at the Equal Employment Opportunity Commission, why did women, really strong, credible women who worked closely with both of them and around the Chairman's suite of offices, testify to the committee that they never saw any signs of distress or discomfort or irritation of the sort that you would expect in Professor Hill? Why did Professor Hill not suggest any concerns to any of her coworkers?

No. 10, why after leaving the Equal Employment Opportunity Commission, did Professor Hill continue to call Judge Thomas seeking assistance in obtaining research, and leaving messages that clearly show a continued interest in cordial, social professional relations with him?

No. 11, why did she call him so many times? Not only the 11 times mentioned in the logs, but 4, 5, or 6 times mentioned by Miss Holt who nobody could doubt. I have never seen a person who testified more forthrightly, and favorably to Professor Hill when she had a chance with regard to their personal friendship and relationship. She was fair to her. She just does not believe her and said basically she knew this did not go on and so did the other three witnesses on that panel. They were very powerful witnesses.

No. 12, if those lurid references to a Coke can and a pornography star, if you want to use that term, occurred, why did she not use those vivid and dramatic conversations in her September 23, 1991 statement to the Judiciary Committee or in her interview with the FBI? She did not. Why is it so circumstantially interesting that one of those references was used in a 1988 case right in the very circuit in which she was teaching law school in the very type of a case she would have been concerned about as a civil rights expert and lawyer? And why was the other

quote so vividly similar to the one in the book?

No. 13, why, when Clarence Thomas years later, years later after she had her own job and was out from under his control, why when he visited Oral Roberts University did Professor Hill socialize with Judge Thomas? Why did she have breakfast with him? Why did she volunteer to take him to the airport? Why was she so friendly to him? The dean said she was tremendously friendly toward him.

I just do not think it makes sense that she would have treated somebody who she alleged treated her with such disdain that she would have treated him as a long lost friend.

No. 14, as Dean Kothe said, how could Professor Hill even think of suggesting Clarence Thomas speak to the university on the issue of sexual harassment if she believed any of her allegations to be true. How could she? Where was her professional obligation then—allow him to come to speak with these students, most of whom were in their twenties.

No. 15, how could Professor Hill, according to two witnesses at the summer ABA convention, say that it was "a good thing" that Judge Thomas was being named to the Supreme Court of the United States of America.

No. 16, why if Judge Thomas said these vile things did Professor Hill not try to distance herself from him? You saw when Professor Fitch said that there were some vile things of a similar nature said to her she got away from the person as quickly as she could. That was really credible testimony by Professor Fitch.

These persons who testified on behalf of Judge Thomas were as good as any witnesses as I have ever seen. You could not have found witnesses in central casting for a movie that were better than those. They were wonderful, honest women and they loved Clarence Thomas as a professional leader.

No. 17, why would Judge Thomas as a African-American male, acutely sensitive to black issues, why would he——

The PRESIDING OFFICER. The Senator's 20 minutes has expired.

Mr. HATCH. May I have just 2 more minutes?

Mr. THURMOND. We are mighty short of time, I say to the Senator. Go ahead.

Mr. HATCH. I will be brief.

Why would Judge Thomas, as an African-American male who was acutely sensitive to black issues, use those antiblack stereotypes, racial stereotypes? To me that was a dramatic part of his testimony. And he testified so credibly. If you read that record and watched him, you knew he did. Why would anybody of his sophistication, his intelligence, and his experience even use that type of language? I do not think it adds up.

I wish I had more time Mr. President. But let me just conclude by saying that even if some people believe that Anita Hill, or that they assume Anita Hill believes what she is now saying, I do not think anyone can ignore these questions. I just do not think they can.

Some may come up with certain explanations to respond to one or some of these questions. But all of them cannot be satisfactorily answered. And cumulatively they raise some very grave doubts about her story.

I do not know why she told this story. I know many believe that she is telling the truth. And I tend to try to understand that.

All I can say is that a very good man, whom many of us know personally, whom we have watched through these 11 years, has been seriously damaged by these allegations by one woman's unsubstantiated allegations that nobody else who worked with him on a continuing basis believes.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. THURMOND. I yield 5 minutes to Mrs. KASSEBAUM, the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, the question now pending before the Senate is, to say the least, extraordinary in the starkly conflicting points of view one can hold. I am sure I have been just as troubled as a majority of my colleagues. Even by the tumultuous standards of recent Supreme Court nominations, this nomination sets new and troubling benchmarks.

Three weeks ago, I rose here to state my support for the confirmation of Judge Clarence Thomas. We now know that at that moment, the FBI was engaged in an investigation of charges of sexual harassment against the judge by a former employee.

Nine days ago, confidential statements by that former employee, Prof. Anita Hill, were leaked to the news media without her approval or the Senate's authorization. From there, as we all know, events took on a life of their own.

Over the past weekend, the Senate Judiciary Committee has attempted to salvage what all of us must consider both a sad and tragic episode in our history. Despite the herculean efforts of the committee's chairman, the Senator from Delaware, and the ranking member, the Senator from South Carolina, and other members, we now know this was not merely a difficult assignment, it was an impossible one.

Even so, the committee's report is before us and the Senate now must vote—a straight yes or no—on whether Judge Clarence Thomas should take a seat on the Supreme Court.

Mr. President, I believe Judge Thomas—or any nominee—deserves a fair, honest, and straightforward decision from the Senate on the merits of his nomination. Judge Thomas will not get that now, regardless of whether he is confirmed or rejected. Instead, he will either advance to our Nation's highest court under a cloud of suspicion he can never fully escape. Or, he will return to the circuit court with the equivalent of a guilty verdict stamped on his resume.

Whatever you may think of Judge Thomas, whether you support or oppose his nomination, he deserved better than we now can give him.

Mr. President, there are many things about this whole affair that deeply trouble me, but none disturbs me more than the fact that not only will Judge Thomas not get a fair, honest decision, neither will Anita Hill.

I know it now is expedient for some to attack not only the charges that Professor Hill has leveled against Judge Thomas, but to vilify and demonize what they call "this woman."

Mr. President, let me make clear that I have no intention of being party to a "high-tech lynching," a phrase I flatly reject as having any validity here. But, I also have no intention of being party to an intellectual witch hunt against Professor Hill.

I see no evidence in the record before us to support any claim that Professor Hill is mentally unstable, is inclined to wild fantasy, or is part of a decade-long conspiracy to get Clarence Thomas. What I do find in this record is much less comforting than these easy and highly speculative theories.

What I find instead are serious charges from a credible witness who has no conclusive evidence to substantiate these allegations. Nothing more than that and nothing less.

Mr. President, I am not a lawyer, and I will leave to others a careful legal analysis of Professor Hill's case, but I want to briefly enumerate the difficulties I have in assessing it.

First, no one disputes that her charges are, by legal standards, ancient history. If this were a trial, which we all have said repeatedly it is not, this case would never even be seriously considered by any court in the Nation because of the time that has elapsed.

The reason for this is both simple and sound—charges of sexual harassment are difficult to prove, and they are extremely difficult to defend against. No man can or should be required to prove he is innocent, certainly not 8 to 10 years after the fact. However, that is essentially the unfair burden that Judge Thomas has faced due to the very fact that this is a political and not a legal arena.

Second, these charges come at the end of a long confirmation process and a long list of other unsubstantiated and unproven allegations against a nominee who has undergone four previous confirmations and five FBI background investigations. In this context, these charges are understandably suspect. Whatever the actual merits, they

take on the appearance of a desperate, last-minute effort to destroy Judge Thomas.

While neither the age of the charges nor the context of their filing proves or disproves anything in my mind, they do create a special burden of proof that I do not believe Professor Hill has met.

Third, in the 10 years since these events are alleged to have occurred and in the multiple investigations of Judge Thomas during that time, there is no credible evidence that he has engaged in similar conduct with any other female employee. In fact, dozens of such employees have presented testimony and other affidavits praising Judge Thomas' behavior toward women on his staff. No other woman has come forward with credible, convincing evidence of sexual harassment by the Judge.

While this does not prove that Judge Thomas did not engage in such conduct toward Professor Hill, it is in my mind a gaping hole in the evidence presented against him. It is possible that the judge harassed only Anita Hill or that he harassed others who have not come forward, but there is no evidence to support either theory.

Fourth, there is little if any evidence in this record that Professor Hill's own behavior at the time of the alleged events demonstrates she was being sexually harassed by Judge Thomas. While Professor Hill has presented witnesses to testify very credibly that she complained of harassment many years ago, none of them had firsthand evidence to document the specific events the professor alleges.

In fact, there is no dispute that Professor Hill filed no charges at the time, remained on the judge's staff, and moved with him to a new position without even a cursory effort to find another job. While she told some friends of the alleged harassment, she told no one in her office, not even close friends, and no one there remembers any sign or suggestion that she was being harassed.

By Professor Hill's own account, she maintained a cordial professional relationship with Judge Thomas during and after the alleged events. None of this disproves her allegations, and none of it is necessarily inconsistent with the behavior that might be expected from a woman who faces sexual harassment by a superior. But, taken together, all of this raises reasonable doubts.

Fifth, and in some ways most troubling to me, is the way in which these charges were raised. The record before us is somewhat confused on this point, but apparently Professor Hill was approached and encouraged to come forward by Senate staffers who heard rumors about her allegations from unnamed sources.

Apparently, she agreed to provide a statement under the condition that her name would not be disclosed to the public, to the full Senate or, according to some media reports, even Judge Thomas himself. While there is some confusion on what Professor Hill authorized the committee to do, it appears that she never agreed to a full-scale investigation of these charges, which would mean that her name could be used in FBI interviews and committee inquiries with anyone who might know anything about this matter.

If this is true, I find it difficult to comprehend what was intended in the raising of these charges.

Is it possible that Professor Hill, an experienced attorney and law professor, believed that Judge Thomas' appointment could be killed in secret? Was she led to believe the mere raising of these charges could force the judge to withdraw or lead the committee to reject his nomination with no explanation to the full Senate or the public?

Mr. President, I find no evidence that Professor Hill is part of some dark conspiracy, but there are real questions now about whether she was used by others in an effort to subvert the Senate's confirmation process. I have no evidence to prove this is so, but the question now hangs in the air around us. If that question is not resolved, it may well be that the darkest cloud of all from this affair will cover the Senate itself.

Let me be clear that I intend no criticism of the Judiciary Committee, or the chairman, or any other member. In fact, I believe Senator BIDEN worked long and hard to see that this nomination was handled in a fair and honest manner.

As I understand it, that chain of events occurred in this way: Professor Hill was encouraged to make an anonymous statement, and she chose to do so. When that was not sufficient for the apparent purpose of forcing the judge's withdrawal, she was asked to agree to a limited FBI investigation, and she did so.

The FBI interviewed Professor Hill, Judge Thomas, and one other witness and provided a report to the committee. A vote was scheduled on the nomination. No member of the committee on either side of the aisle objected and asked for further investigation or a resolution of the charges. The committee then voted, and the nomination was scheduled for a floor vote under a time agreement.

At some point in this process, someone with access to Professor Hill's statement leaked it to the press—apparently without her approval and clearly without the approval of the committee. The rest, as they say, is history.

Mr. President, this evening we must answer the first of two questions that arise from this matter: Whether to confirm or reject Judge Thomas' nomination. Shortly thereafter we must resolve the other question: What the Senate will do to assure no repetition of this affair.

Three weeks ago, I spoke in support of Judge Thomas' confirmation. In all that has come to light since then, I find no compelling basis to overturn that judgment. In fact, I believe it would be manifestly unfair for the Senate to destroy a Supreme Court nominee on the basis of evidence that finally boils down to the testimony of one person, however credible, against his flat, unequivocal, and equally credible denial.

Mr. President, throughout my years here I have taken pride in the fact that I am a U.S. Senator, not a "woman Senator." When some of my male colleagues have suggested that I know nothing about national defense because I am a woman, I have been offended. In the same vein, I have to assume that many of my male colleagues are offended by the notion that they cannot begin to understand the seriousness of sexual harassment or the anguish of its victims.

On the question before us, some women suggest that I should judge this nomination not as a Senator but as a woman, one of only two women in the Senate. I reject that suggestion.

The issue before me is whether, with all of the ambiguities surrounding this matter, the allegation by Professor Hill has been substantiated to the point that I should change my previous view.

I have reached the conclusion that it has not and, therefore, I will vote to confirm Judge Thomas as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to my friend from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. BIDEN. Mr. President, 30 seconds of my own time. Let me apologize. Every one of our colleagues is prepared to speak in more depth, and much longer, because they feel so strongly on this nomination for and against. Unfortunately because of the unanimous consent we cannot go beyond 6 p.m. I only have 44 minutes left to distribute, and I thank my colleague. I know he has much more to say but I appreciate his taking only 4 minutes.

Mr. GRAHAM. Thank you, Mr. President. In deferrence to the brief time, I will summarize my remarks.

I start this process with the presumption of correctness of the nominee of the President of the United States. I believe that the person elected by the people of America deserves the benefit of the doubt as to the individual whom he selects to serve on the U.S. Supreme Court. As Governor of Florida for 8 years, I had the opportunity to appoint many judges, including four members of our Florida Supreme Court.

The qualities I looked for included intellect, judicial temperament, character, and the ability to grow in the responsibility as a jurist.

I apply those same standards to our current responsibility of confirming nominees of the President.

Mr. President, the nomination of Judge Clarence Thomas to the Supreme Court received my presumption of correctness. During the initial confirmation proceedings of Judge Thomas, I found an erosion of that presumption. I was concerned with several aspects of information developed at that hearing. I was concerned about Judge Thomas' limited experience, concerned about the American Bar Association's qualified recommendation, concerned about actions at the EEOC, particularly as that reflected an insensitivity to discrimination against older Americans, concerned about some of the evasive responses.

But in spite of all of that, in spite of the erosion of the presumption, I still was prepared to vote for Clarence Thomas because I felt that he had demonstrated the ability to grow. And I was hopeful that while he might barely be across the line of acceptability today, that in his service on the U.S. Supreme Court, he would grow in wisdom and judicial quality.

The allegations raised by Professor Hill, in my mind, caused a cessation of that judgment and a turning to two fundamental questions: One, who was telling the truth? And, two, did it make any difference?

On the second question, yes, it does make a difference. The charges that were leveled by Ms. Hill are significant. They go to the issue of integrity and character. They relate not only to events that have occurred in the past, but also to a denial of those events today. In my opinion, if those charges were to be believed, then the presumption of correctness would have been erased.

Who is telling the truth? Mr. President, we will probably never know the ultimate answer to that question, but I approached this issue by asking this question: What should be Ms. Hill's motivation, other than the one she stated, that is, she was called upon, did not volunteer, and felt that it was her responsibility as a citizen to answer truthfully. That is a laudable basis for her action, and I have heard no credible alternative motivation suggested, no motivation which is consistent with the manner in which she made this information initially available.

So I must accept as essentially a factual statement of the circumstances that which was presented by Ms. Hill. With that, the presumption of correctness has evaporated and with that, I cannot vote for Clarence Thomas to be a member of the U.S. Supreme Court.

Mr. President, at a later time, with more opportunity, I wish to talk about some of the concerns that I have about this nomination process, but I would like to add just one thing in conclusion. I listened to these hearings—Mr. President, could I have 1 additional minute?

Mr. BIDEN. I really do not have any more time at all. I really do not.

Mr. GRAHAM. Mr. President, I will withhold that personal experience for a later date, but our country is hurting on this process, and I hope that we will now turn ourselves to healing. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 3 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, it is clear in the more than 13,000 phone calls my office has received in the past week that the process we have witnessed here in Washington has grabbed and held hearts and minds in every American household—in every American workplace.

And, as a Senator from Minnesota, I cannot consider this nomination without trying very hard to understand the context of fear and vulnerability that has helped make this process we are witnessing here much larger and much more important than the confirmation of one justice to the U.S. Supreme Court.

I was reminded last night by a fellow Minnesotan, Mr. President, that the charges we have heard in this matter follow an entire summer in my State of brutal murders, kidnapings, and other cases of physical abuse and criminal conduct directed by men against women and against children.

For many Minnesotans, this proceeding is about Melissa Johnson, brutally murdered just days after she had graduated from St. Cloud State University.

It is about Margaret Marquez, a young child separated briefly from her parents in a busy Minneapolis discount store, her body found at an interstate rest stop several days later.

It is about Jacob Wetterling, still missing 2 years after his gunpoint kidnaping near my hometown in rural Stearns County.

It is about Carin Streufert, sophomore at the University of Minnesota, abducted on her way to a neighborhood business place, then raped and murdered.

It is about Geraldine Steinbuck and her two daughters, Jessica and Ashley, also from St. Cloud, and also brutally murdered in the sanctity of their own home.

The calls coming into my office, Mr. President, are also telling graphic and personal stories of sexual harassment thousands of Minnesotans have seen or experienced in the workplace.

Hundreds of callers have felt the need to tell their own stories, many dredged out of distant memories and many laden with guilt and anger at not being told at the time.

And, hundreds of others—both men and women—have expressed anger that it has taken a televised national hearing to raise the consciousness—and raise the visibility of all Americans—to vulnerabilities they have felt—and indignities they have experienced—for an entire lifetime in the workplace.

Mr. President, there is no way that I can personally understand and appreciate that feeling of anger. But, it is real. It is justified. And, it must motivate each and everyone of us to commit ourselves to using this incredible experience to drive our own future actions—to effectively deal with violence against women and children and to deal with sexual harassment in the workplace—including the workplace represented by the U.S. Senate.

When the Senate last met a week ago, the decision was taken to delay the vote on this nomination while the Judiciary Committee in particular, and all of us in general, sought to get the truth. At a perilously high cost, we have learned that we did not have the means to get the truth in a situation like this.

For 250 years we have been trying to find a fair and objective way to get the truth when an accusation is made. We have developed a system of rules and procedures to prevent injustices from being done. It is called a court of law.

Unfortunately, a Senate Committee cannot act as a court. There are no rules of evidence, no impartial judge or jury. Those who render the final decision are as far from being insulated from public opinion as they can be. They are politicians. There are constant demands for play-by-play commentary, which no judge would allow. There are no advocates for the parties, except the finders of fact themselves.

As wrenching and costly as the hearings were for everyone involved, all we really heard as far as the truth was concerned was an enormous amplification of the original allegation and the categorical denial. No fair person can make a final, objective decision from what took place in the hearings.

But that is not to say that the hearings had no meaning; they were an important event for us all to go through. That is why I have received 13,000 phone calls in my office—that is right, 13,000 and I thank each and every one of these people for getting personally involved in this issue. We should not forget this event; to the contrary, we should make the most of it.

The progress of American values is not an evolutionary process, making slow steady steps forward. Especially in recent times, our values change in

revolutionary ways, when we share a common experience which changes the way we see things. Guard dogs attacking civil rights marchers. The tragic death of Ryan White. Oil-coated birds in Prince William Sound. All changed our values in a radical way.

America has undergone a revolution this week in the way it views the issue of sexual harassment in our society. It has taken a spectacle of this magnitude to penetrate years of ignorance, misunderstanding, and neglect.

But today, America understands what sexual harassment means, it understands how wrong it is and it is ready, I hope, to take the necessary steps to ensure that all people, women and men, receive the respect and dignity they deserve in the workplace. We have still got a long way to go.

That begins, I say to the 97 men and 2 women I serve with, right here. This great institution has slipped a few pegs in the last month, which may be an embarrassment for us personally, but the real tragedy is constitutional.

This body has a unique role to play in this democracy, which we cannot fulfill if people do not trust us.

The American people know that we have difficult problems to solve, and they understand that. But what they cannot tolerate is hypocrisy.

That this Congress would pass a series of laws on civil rights, worker safety and yes, sexual harassment, and then exempt itself is hypocrisy, pure and simple. That was a sense that came through my phone calls, whether people were for Judge Thomas or against him.

Our colleague Senator GRASSLEY has tried to show us the way for years on this. Now we understand what he is talking about.

Let us get our own house in order. Now.

The Civil Rights of Act of 1964. The Fair Labor Standards Act. The Equal Pay Act. The National Labor Relations Act. The Americans with Disability Act. The Age Discrimination Act. The Civil Rights Restoration Act.

The Congress wrote them.

The Congress needs to obey them.

I have a sexual harassment policy in my office. What we need is to see it in the Senate rule book and see us in the Federal statute book.

This institution needs to come out of our 1950's style informal approach to these matters, and thrust us back into a leadership role. The Committees on Rules and Ethics have to address this matter immediately and show us the way. Needless to say, much is at stake.

The vote we will all cast in a few minutes is not, however a referendum on sexual harassment. There will be ample opportunity in the very near future to demonstrate where we stand and what we have learned on that subject. We have work to do right here.

When the tempers have cooled, we need to reexamine the confirmation process. Frustration over divided government, Republicans in the White House and Democrats in the congressional leadership, is inevitably going to find expression in the confirmation process. But there must be limits.

Character is a valid issue, but we cannot allow the precedent to be established that the presence of an unsubstantiated allegation is enough to disqualify a President's choice. If we do, the American people will eventually suffer, because the brightest and the best will end up making money rather than policy.

Mr. President, I will vote for Clarence Thomas because the substance of what I know about him is more compelling than the single character charge I have heard made against him. Those who have been acquainted with him and worked with him for decades, including many women coworkers, say he is a man of character, determination, and courage. The hearings certainly bolstered that impression.

His mentor is our colleague JACK DANFORTH. The strength and character of that relationship over the last 12 years has been exemplary. When put to the ultimate test, that relationship has been remarkable.

Some have argued that the experience Clarence Thomas has gone through is so damaging that he cannot hope to serve effectively after all this. Judge Thomas candidly said that he died last Saturday, and Senator DECONCINI rightly asked how he can be as good as a justice as he would have been.

My experience tells me the opposite. Pain and tragedy are part of life, and they really show what a person is made of. For people of character a confrontation with mortality makes them a stronger person than they ever were before.

The President of the United States, and not 100 Senators, is the person the Constitution entrusts with the responsibility of nominating justices to the Supreme Court. Advice and consent, in the standard I have consistently applied over 13 years, means making a judgment as to the character, qualification, and temperament of the nominee.

I come to the same judgment today that I did when I met him face to face: That he is a person America should be proud of.

This choice is difficult because of the intense heat of the politics of the moment. Whether this vote turns out to be right or wrong will be decided over three decades in Judge Thomas' votes and opinions on cases we cannot even imagine at this point in history.

I have concluded that Judge Thomas, with his work, his experience as a African-American and his life of triumph over obstacles, has earned the trust required to confirm him for a lifetime appointment to the Supreme Court of the United States.

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

Who yields time?

Mr. BIDEN. I yield 4 minutes to my friend from Connecticut and apologize it is only 4 minutes.

Mr. DODD. Mr. President, let me thank the distinguished manager and the chairman of the Judiciary Committee.

Mr. President, this debate on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States is the culmination of several months of Senate consideration. And that is how it should be, because we are talking about the confirmation of a person who would be one of only nine Justices who are the ultimate arbiters of our Constitution. That is an awesome responsibility for him and, in turn, for every Member of the Senate.

Mr. President, again, I have always felt that passing on the qualifications of a nominee to the Federal bench is one of the most important duties that I will ever undertake as a Senator. While I have always felt that Presidential nominations deserve some measure of deference and that in some cases close calls should be decided in favor of the President, I have also always felt that the Senate's constitutionally mandated role of advice and consent is considerably broader than merely rubberstamping the President's choice.

I place this level of importance on this particular decision because of the nature of judicial appointments. Nominees to the Federal bench, if confirmed, are lifetime appointees charged with the awesome responsibility of interpreting and applying the Constitution to all measure and manner of dispute. Appointees to the Supreme Court inevitably affect the course of constitutional law for decades. And so it is with President Bush's current nominee to our Nation's highest Court.

Judge Thomas, if confirmed, would be only the 106th Justice to serve on the Supreme Court of the United States. Unlike any other court, however, this Court is the supreme arbiter of disputes in our land. As such, it is of paramount importance that aspirants to this High Court be of good character, have the highest legal qualifications and possess a genuine commitment to upholding the Constitution.

Mr. President, it is no secret that as of last week I was leaning toward voting to confirm Judge Thomas based on my belief that Judge Thomas would grow into the job and turn out to be a very able member of the Supreme Court. I also believed that Judge Thomas' life experiences would bear great weight on his decisionmaking and that Judge Thomas would bring some measure of diversity to the Court. However, over the course of this past week I have had the opportunity

to reread the record, as well as listen to the testimony of this past weekend's hearings. Many nagging doubts resurfaced. Doubts that I thought I had resolved.

Mr. President, three questions have guided my decision on Judge Thomas' fitness to serve on the Court. First, I asked whether or not Judge Thomas has the legal and technical ability, skill, and experience necessary to serve on the Supreme Court. I have accordingly reviewed the Judges' own writings, transcripts of the Judge's testimony before the Judiciary Committee and the testimony of other interested parties.

While Judge Thomas may not be the most or best qualified nominee for the job, the American Bar Association's assessment of Judge Thomas is qualified. In my own review of the record, I have found nothing in Judge Thomas' background which suggests any legal or technical inability to execute the duties of a Supreme Court Justice.

Second, I have considered whether or not Judge Thomas is capable of, and faithfully committed to, upholding the Constitution of the United States.

The question for me is whether or not Judge Thomas is capable of, and faithfully committed to, upholding the Constitution. Of primary concern is whether Judge Thomas has the proper temperament to decide each case on the basis of the facts presented and in the light of the law previously decided. I have concluded that while Judge Thomas is not the nominee I would have chosen either ideologically or philosophically, then again, neither would I expect the President to select such a nominee. Nevertheless, I have had nagging doubts as to whether Judge Thomas while capable is committed to upholding current constitutional case law.

In an effort to answer these doubts, I have placed great stock in the counsel of such notables as Prof. Guido Calabresi, dean of the Yale Law School, who told me that he felt that Judge Thomas would, in fact, grow into the job. Dean Calabresi expressed a sincere confidence that Judge Thomas would turn out to be a very able member of the Supreme Court.

Many of the people that I have discussed this nomination with have argued that Judge Thomas' life experiences will bear great weight and that he will bring diversity to the Court. We have all been impressed with the story of Judge Thomas and are certainly aware of Judge Thomas' rise from the poverty of Pin Point, GA, and the Jim Crow South to the doorstep of the Supreme Court.

These achievements alone, however, should not and must not be the sole reason to confirm Judge Thomas to a seat on the Supreme Court. I believe that the road that Judge Thomas has traveled and the obstacles that he has had to overcome will, over the course of his judicial career, play a very important role in the shaping and evolution of his judicial philosophy. Few, if any, Members of the Senate can boast of such experience.

Mr. President, finally, I have had to determine whether Judge Thomas has the character to serve on the Supreme Court. I have struggled for many days now trying to come to some determination on Judge Thomas' fitness to serve on the Supreme Court.

In an attempt to answer that question, I have reviewed Judge Thomas' background, listened with interest about his background, and have read the transcripts of this weekend's hearings as well as the many news accounts in an attempt to assess Judge Thomas' character and freedom from conflict.

The revelations of Prof. Anita Hill turned what I thought had been a thorough review of Judge Thomas' character on its head. Like many Americans, I, too, was riveted to the the television all weekend watching the hearings. As I watched, it became increasingly apparent that neither Judge Thomas or Professor Hill were on trial. The Senate was on trial and the issue was whether or not this institution could adequately ferret through the testimony of both the judge and Professor Hill as well as an array of witnesses and find the truth.

The committee was in a very difficult position. It is very easy with the benefit of 20/20 vision to say how the Judiciary Committee should have gone about getting to the truth. But the fact is that the Senate is ill-equipped to act as a court of law or settle disputes between persons. The events that led up to the hearings and the hearings themselves made this point readily apparent.

Mr. President, as I have just stated, hindsight is 20/20. It is easy to say how I would or would not have handled the hearings. I, therefore, do not want to blame the committee as so many others have done. I want to merely point out that the committee might have gotten more information if the committee had elicited the information in executive session. The bright lights of gavel-to-gavel coverage makes good drama but it is simply not the best way to find out the truth. Airing this dispute in public helped little to get to the truth of this matter.

My fear is that we will set a precedent for the airing of these investigations in public, where it is least unlikely that any meaningful information will be secured. The judicial confirmation process is too important to have it trivialized on television. The events of the past week must not be repeated if we are to ensure any measure of integrity in the confirmation process.

Mr. President, I was once told that the Supreme Court of the United States is the only institution of our Government that has as its sole enforcement weapon the power of moral persuasion. The Supreme Court does not have an army, nor can it enforce its decisions at gunpoint. The Court's power is that of moral persuasion. Americans must believe that a true and real understanding of the Constitution flows out of the Court. This belief in our system must never be undermined. The question today is whether Judge Thomas should be confirmed to the highest court in the land.

Over the past week I have had the opportunity to listen to the testimony of Professor Hill and her corroborating witnesses. They were very credible and compelling witnesses. After a weekend of hearings and reading hundreds of pages of material on this case, I have too many doubts as to who is telling the truth.

Mr. President, to be sure, Judge Thomas' response to the accusations were forceful, believable, and emotional. But categorical denials did not address the questions and doubts I had hoped would be resolved.

Mr. President, I must reiterate that while I have always felt that Presidential nominations deserve some measure of deference the Senate's constitutionally mandated role of advise and consent is considerably broader. As such, it is of paramount importance that aspirants to this High Court be of good character, have the highest legal qualifications and possess a genuine commitment to upholding the Constitution.

Mr. President, it has been said, "if in doubt, don't!" And the fact is that I have far too many doubts about Judge Thomas to say yes.

I am deeply concerned that placing a person on the Court with a cloud over his head undermines moral persuasiveness of the Court.

I have, therefore, concluded that based on my own review of Judge Thomas' background, legal qualifications, and character that I will vote against the confirmation of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

Mr. President, I think, like all of us and many of us here, we begin with a presumption to support Presidential nominees for whatever position, including the U.S. Supreme Court. That has been the case with this Senator over the past 10 years. I have supported all but one of President Reagan's, now President Bush's, nominations to the U.S. Supreme Court. Regretfully, Mr. President, in this case, I will not support this nominee.

If I had to paraphrase the remarks that I prepared, it comes down to the issue of doubt, serious doubt. I certainly, like everyone else, was deeply impressed with the background of Clarence Thomas. It is a compelling story.

There are very few in our generation born of the postwar period who have traveled the distance this man has in the few short years of his life.

Mr. President, I am also impressed with his intellectual and legal background as a graduate of Yale Law School in my home State of Connecticut. But, Mr. President, I was left with doubts, doubts that were reflected in the first series of hearings in which Clarence Thomas testified regarding his appreciation of case law and precedent, his unwillingness, I think now for obvious reasons, to express his own views on some of the important matters that have been before that Court. I regret that Clarence Thomas may have been overhandled by people from the White House and elsewhere to counsel him as to how to respond to questions. In a sense, Mr. President, I blame ourselves in part for that because God help anyone who comes up and expresses a definitive view on one of the hot button issues of our day. So, in a sense, we bear culpability for people unwilling to come forward to express those views or the fact that the universe or the world from which we choose these candidates has so shrunk that anyone who does have any views cannot pass muster in this body.

As were most Americans, I was riveted to the television set this weekend watching the compelling testimony before the Judiciary Committee. I have great admiration for the chairman of that committee and its members. They were put in the terrible position of having to deal with a very, very divisive, a very emotional topic and subject matter, sexual harassment.

Mr. President, I could draw no definitive conclusions from this weekend except, of course, that sexual harassment is an issue that deserves far more attention than has been given over the past number of years in this country.

But I did not leave necessarily with one clear idea of who was guilty of perjury, or guilty of the crime charged. But, Mr. President, I was left with doubts. It was not cleared up for me.

Mr. President, I happen to believe that when voting for a nominee to serve on the highest court of this land, where the only weapon the Court has is moral persuasion; they cannot point a gun at anyone's head; they cannot bring an army together to make sure that their decisions are obeyed by the people of this land; it is only moral persuasion which ultimately allows them to carry the day.

Mr. President, I would be deeply concerned that that moral persuasion, the only weapon of the Court, would somehow be eroded by this nomination. For those reasons I have my doubts. And I happen to believe if doubts are primarily what you have, it seems to me you must err on the side of caution, if erring is going to be the case.

Mr. President, if Judge Thomas is confirmed, I hope to be proven wrong about these doubts. But I cannot take that chance for as much as a four-decade appointment to a Court that will decide many of the compelling issues of our day.

I have great respect for my colleague from Missouri. I spoke with him recently before taking the floor, to tell him personally of my decision. It has not been an easy decision. In fact, I was leaning in favor of this nomination. But because I could not rid my own mind of the doubts that have been gripping me over the past number of weeks, I regretfully have taken the position I have this afternoon and with regret I will vote not to the confirm Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Delaware.

Mr. ROTH. Mr. President, when I was first elected to office, a man I admired greatly—Senator John Williams, who was known as the conscience of the Senate—taught me a lesson I will never forget. On the floor of this Senate, Senator Williams was known as Mr. Integrity. His reputation was absolute, despite the fact that he dedicated his life to exposing corruption in Government. One would think his silver character would tarnish in the process, but Senator Williams remained above reproach. And his lesson was simple.

He told me, "Bill, I will never, ever, go after a person's reputation until I am 125 percent certain that he is engaged in wrongdoing—until I have tangible evidence to support the claim. Because a man's reputation is the most sacred possession he has in life, and once it is even challenged it can never be completely restored."

I believe that after this weekend, all America understands the wisdom of John Williams. The reputation Judge Clarence Thomas—a reputation he spent 43 years to establish—was challenged by a woman who was credible, competent and articulate. The conduct she alleged is both heinous and inexcusable. Like every man and woman in America, I cannot say whether the conduct occurred. But make no mistake about it, sexual harrassment is a vile crime—a serious problem that must be dealt with in no uncertain terms. As a consequence of the allegations leveled against Judge Thomas, the reputations of both he and Professor Hill have been tarnished; they will never be the same again.

The tragedy is that these reputations were sacrificed without tangible evidence on either side that either conclusively confirmed or denied the alleged activity. So as we determine the fitness of Clarence Thomas to sit on the Supreme Court we must do so on what we know to be fact. And these are the facts:

Fact: Clarence Thomas has served our Nation well in increasingly important roles of responsibility, four of which were sustained by this very body, the U.S. Senate.

Fact: Clarence Thomas has been one of the most scrutinized nominees for the Supreme Court in history, and in 43 years of his life has done nothing to prove him unworthy to serve with the exception of this alleged misconduct which took place 10 years ago.

Fact: This alleged sexual harassment that has cast aspersions on Judge Thomas's reputation is not confirmed with persuasive, independent evidence. As the Washington Post said today, of the four witnesses who testified on behalf of Professor Hill, "None said she had told them of his alleged obscenities. None seemed to know Judge Thomas or to have been privy to their workplace or social relationship." On the other hand, "those witnesses who appeared before the committee and who had been part of Professor Hill's and Judge Thomas' working life all testified on the other side."

Mr. President, none of those who knew both Judge Thomas and Professor Hill could even imagine such misconduct was taking place. Such misconduct ran completely contrary to their daily experiences with, and observations of, Clarence Thomas. Likewise, in the 33 years before these allegations were said to take place and in the 10 years since, there has been nothing—not one indication of misconduct.

Though the proceedings over the weekend were not in a court of law, our Nation's deeply held conviction—our sense of fair play—is that individuals are innocent until shown otherwise. Because this is so fundamental to our ethics, it is the burden of the accuser to lay out the evidence. And again, the evidence was not sufficient.

Mr. President, these are the facts. It is a tragedy that the reputations of two very bright, very diligent people were put into question this weekend. It was a tragedy that Americans had to see such a vital and important process of Government being manipulated. The nomination process for the position of Associate Justice on the Supreme Court is no time for political machinations. It is a time to put an intelligent, proven and judicious individual in a most venerable position. I reaffirm my support for Judge Clarence Thomas to serve as an Associate Justice on the Supreme Court.

Unfortunately, the appointment process to the Supreme Court has become politicized because we have lost the original intent of our Government's Founders. In the last half century, people have looked upon the highest court of our land as a means of promoting their political agendas. This

perception of the Supreme Court's role has opened the floodgates of political activism and special interests. Leaks are considered fair game as a means of preventing an individual of the wrong political views from receiving a lifetime appointment.

Mr. President, it is going to be difficult to reform the process of appointing and confirming Supreme Court Justices until the role of the Supreme Court is seen as it was intended to be seen—as the interpreter of the law—the Constitution, statutes and treaties—in specific cases and not as a political body to promote special interests. Mr. President, we must get the process under control. The only remedy is to return to the Constitution.

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

Mr. BIDEN. Mr. President, I yield 4 minutes to my colleague from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. Speaker, I wish to thank the chairman of the committee for yielding time. I understand, I say on behalf of many of us, the difficult job he has in parceling out time. I had intended to make some lengthy remarks here, but in just the few short minutes that are now being allocated to the Senators to speak, I wish to make just a couple of points briefly.

No. 1, I made my decision on this nomination before all of the events of the past weekend and before the allegations those hearings explored were made. I made my decision to vote against the nomination of Judge Thomas based on the record of the first hearing, based on my analysis of what I regard as the still evolving judicial philosophy and a variety of other issues and concerns which I discussed here on the floor of the Senate last week. I have not changed the conclusion which I reached at that time. I will elaborate on my reasons for the record.

I did wish on this occasion, however, to make a very few remarks about the hearings of the last several days. First of all, I understand the perception of many in this country that Judge Thomas has been treated by the process unfairly. There are many more telephone calls being received in my offices in favor of Judge Thomas than calls being received in opposition to Judge Thomas. Many feel the leak was inherently unfair and that as a result the charges came to light at the last minute and this was unfair.

I also would like to say that I think it would be wrong to judge Clarence Thomas as an individual on the basis of one's perception of these allegations even if one concludes they are true. He is a very complex individual, as is everyone. I think the testimony of his friends and acquaintances over the years is very powerful.

But, Mr. President, we owe fairness to Prof. Anita Hill also. She did not ask to come forward. She was pulled into this process, also by the leak. She came forward and gave testimony which seemed to me to be extremely honest and credible. I know the country is pulverized now on all of these subjects, but I regret very much that at one point she was charged by a Senator with having perjured herself.

I disagree strongly with that characterization. I thought that everything she said was very logical, and I thought the four corroborating witnesses, who talked about how she had confided in them 10 years ago at the time this took place, were very believable and credible.

I also think, incidentally, that one of the things we have all been learning about on the subject on sexual harassment is what goes on inside the mind of a victim, which sometimes leads that person to keep silent about it and to continue maintaining a facade of friendship and an outward relationship so long as that secret is kept.

But, Mr. President, this discussion of the allegations was in a sense a microcosm of larger questions also involving a large change in our way of thinking about the relationship between men and women.

This Court, if Judge Thomas is confirmed, will be deciding a number of issues that bear directly upon that relationship.

Mr. President, there is no mystery about my view on the nomination of Judge Thomas. I made my opposition clear long before this weekend's hearings opened. And that opposition, based on Judge Thomas' judicial philosophy, on his record and experience, based on the evidence before the Judiciary Committee and Judge Thomas' testimony, that opposition has not been affected by this weekend's hearings. Whether you believe Professor Anita Hill or Clarence Thomas about the allegations of sexual harassment, whether you don't know who to believe about those charges, Judge Thomas' record and views—or lack of—were presented to the committee and convinced me that at this time, because of his still-evolving judicial philosophy, because of his inexperience in dealing with constitutional issues, because of his lack of judicial maturity, Judge Thomas' nomination did not warrant confirmation.

That does not mean that I watched this weekend's hearings as a disinterested observer. I don't know how anyone could have done so. For all of us here in the Senate, for our Nation as a whole, for men and women of every color and heritage it was a painful—though necessary—travail. We watched together, studying the television closeups for clues, searching the eyes of all those who spoke for signs of honesty, for an assurance of integrity and character, for some clear indication of some pristine truth. Yet, as hard as we may have looked, as much as we believed one side or the other, we had to, all of us, acknowledge human limitations. We simply cannot look inside someone's heart; we're unable to see through to the soul. Some questions are left unanswered. We are left to weight the evidence and search our own hearts.

In Judge Thomas' favor, it is significant that there was no pattern of sexual harassment evident through the testimony of women who worked with him, through extensive interviews with women who worked with him. There was no indication that this was routine or that Judge Thomas was insensitive to the women with whom he worked; women he says he promoted and helped throughout their careers.

But the Senate—and quite frankly, our Nation—owes fairness to Professor Hill as well. She stepped forward to clear her conscience; to break a silence long held because she believed so strongly that too much was at stake. She had pushed these memories away through other confirmation hearings when Clarence Thomas came before the Congress. But this time, it was a nomination to the highest court in our land, a lifetime appointment that comes with an indelible impact on our future and our society. Anita Hill felt she had to, as she said yesterday, perform her duty as a citizen. She had to speak up.

We owe her fairness, not speculation about nonexistent psychological ailments, not baseless accusations about perjury, not theories about her relationships with men, or her inability to get along with women, not a smear campaign determined to undermine rather than examine her statements. We owe Anita Hill fairness.

Consider the credibility of the witnesses who testified in her behalf during this weekend's hearings. They presented clear, corroborating evidence both of the allegations themselves and of Anita Hill's own temperament and honesty. This is not about a book deal with a movie to follow, as some have tried to paint Anita Hill as a cheap opportunist. This is about a woman already rich in courage determined to speak her mind and follow her convictions.

There are important lessons in this painful episode. To state the obvious, we have learned that sexual harassment is a much bigger issue than we—than most men—had supposed, or could have imagined. But we have also learned that men and women see and feel the meaning of events differently. Men and women have different ways of looking at the same events, different ways of understanding them, different points of outrage. It sounds simple, but its implications are not.

The revolution in thought about relationships between men and women is shaking the Senate and the country.

And there is a gradual recognition by men that women see many things differently, a gradual recognition of the unremedied complaints and unheard frustrations of women who have long fought for answers, for justice, for rights, for a place at the table, and a voice in the decisionmaking.

The hearings this weekend presented us with a microcosm of this revolution. The fact is, most women see issues before the Supreme Court differently than President Bush and his white, male, chief advisers; most women see issues differently than men. And women are stepping forward to express their point of view.

President Bush confronts this revolution in thought with indifference. The extremists in the right wing of his party demand a nominee to the Supreme Court who will try to move history in reverse, who will not just ignore but try to turn back the women seeking to be heard. Yet, the majority of women react to this extremism with angry and renewed energy, with a force that cannot be ignored or denied. President Bush knows that, too. So, he nominates a candidate likely to side with the extremists once he's on the Court but who remains enough of a mystery to keep the revolution under wraps.

Think about the evidence presented to this Senate. In the last 10 years, Judge Thomas signed documents calling for the overthrow of cases protecting women's rights. Now he tells us he didn't know what he was signing and besides, he didn't mean it anyway. This, on an issue affecting a woman's most basic, most personal right. We are asked to believe that over 18 years—18 years—this man never discussed Roe versus Wade, one of the most controversial cases ever to be decided by the Supreme Court. Over and over, he stonewalled the committee on this and other critical issues of such major importance.

Again, this weekend's hearings present a microcosm of a much larger debate where we were forced to once again address the same issues.

We don't know what happened 10 years ago. What did Clarence Thomas say and do? Was there any wrongdoing at all? What did Anita Hill do? We won't ever know for certain. What we do know now is that a man remembered and saw much differently than a woman remembered and saw.

There are those who questioned how, if anything happened, Anita Hill maintained contact with Clarence Thomas over the years and, more than that, even sought him out when she was in Washington or he was in Oklahoma. How do you explain the phone messages? The trip to the airport? The kind comments at the bar association meeting? It doesn't make sense. Until, of course, you think about different perspective.

Anita Hill was a young woman at the Education Department without high-powered friends or contacts. Clarence Thomas was her contact, clearly advancing in an administration that was offering him rewards. She was his assistant. She moved with him to the EEOC because she thought it was the only option that made sense. She wanted to stay in Government civil rights work and the Department of Education was under attack by the Reagan administration. Over the years, Thomas would remain a well-placed powerful contact who provided an entry to a world she would otherwise be prevented from entering.

Why is it so surprising that a woman would push back to the very recesses of memory such unpleasantness? Why is it so surprising that woman stayed silent rather than move to destroy her still-forming career by taking on a much more powerful and intimidating foe who was clearly a favorite of the White House? Why is it so surprising that a woman decided it made more sense to forget the injustice than try to fight it in a system that seemed weighted against her? Why do victims of other kinds of abuse stay silent for so long? There is, quite simply, a public and a personal truth. Anita Hill did not look for this most public of forums. She did not approach the Senate. She did not seek out the Judiciary Committee. But when the Judiciary Committee approached Professor Hill about her experience with Clarence Thomas, she felt she had to, finally speak out, to state that personal truth publicly, however painful it may be.

The Senate must investigate how Professor Hill's statements became public. Where or who was the source of the leak? What happened? Appropriate steps must be taken. But those statements have been made public and the firestorm they have sparked must force us to confront a new reality.

As a nation, we must begin to understand a little more about why women feel so strongly when men don't, about why there are issues that women view differently than men; about why women feel so strongly about the case law that Clarence Thomas would be making as a member of the Supreme Court.

But President Bush seems determined to do his best to overturn existing laws protecting women's rights and to make new laws restricting those rights.

President Bush, by sending to the Senate someone who might be a good person, certainly a smart and hard-working person, but a person with no clear views and a skimpy judicial record, focused this debate on questions of character. We were asked to judge Clarence Thomas not on his judicial views but on the admirable journey he has made from Pin Point, GA to a Supreme Court nomination.

President Bush wanted off the hot seat. He wanted to turn the debate away from the issues. President Bush failed to see that there are some things important to women that are not important to men.

Mr. THURMOND. Mr. President, I yield 4 minutes to the distinguished Senator from Alabama.

Mr. SHELBY. Mr. President, 2 weeks ago, I stood in this Chamber in support of the nomination of Judge Clarence Thomas. I stand here today, a witness—like all of my colleagues—to one of the most public, painful, and perplexing spectacles ever to befall the U.S. Senate.

I do not think there is a Member of the Senate who was not affected by the process. And clearly both the nominee and Professor Hill suffered under the glare of these hearings.

But, we are not here today to discuss the process and its faults. We are here to decide whether there is sufficient evidence that Clarence Thomas sexually harassed Anita Hill.

I take very seriously charges of sexual harassment and discrimination in the workplace. As a member of the Senate Armed Services Committee, I have been outspoken about the problem of sexual harassment in our Armed Forces. Sexual harassment has no place in our military, in Government, or in corporate America.

I do not take Anita Hill's allegations lightly and I believe that it was not only fair, but appropriate that the Senate acted to hold hearings on this issue. In fact, these hearings will undoubtedly serve to bring an issue out into the open that has for too long been hidden in America's workplaces.

The point is not how bad sexual harassment is. We stand in agreement on this issue. We come back instead to the question that has plagued the committee, the Senate and the American public: Was Professor Hill sexually harassed by Judge Thomas?

This is a question I have been struggling with since learning of the allegations through the media last weekend.

Chairman BIDEN, in his opening remarks, reminded us that our judicial process maintains the presumption of innocence. I have read the FBI report, I have listened to the testimony presented during over 3 days of hearings. I have sifted through reams of additional information submitted during this hearing process.

As a former prosecutor, I know that the onus now is on myself and 99 of my colleagues to review the information made available during these hearings and decide if there is sufficient evidence to conclude that Judge Thomas sexually harassed Professor Hill.

Both Professor Hill and Judge Thomas were credible, forceful witnesses. But for me, doubts linger, questions remain. I am simply not certain that these allegations have been fully substantiated. I wonder for instance:

Why Professor Hill followed Judge Thomas from the Department of Education to the EEOC even though her job at Education was safe;

Why Professor Hill testified that she never saw Judge Thomas outside of the office only to have Judge Thomas state under oath that he had been to her home on a couple of occasions—testimony Professor Hill later confirmed;

Why Professor Hill, in a conversation with the Washington Post, qualified the EEOC telephone logs as "garbage" and that she had not called Judge Thomas except to return his calls, only to admit under oath that she did initiate some calls to Judge Thomas; and

Why during four previous Thomas nominations, Anita Hill never came forward with this information.

Although this was not a trial, we have no choice but to look to our established legal traditions and guidelines and decide if the burden of proof has been met.

There are inconsistencies. The testimony is inconclusive. I have weighed the evidence, studied the hearing transcript and have searched my soul during these past several days. Now, the decision is to whom you give the benefit of the doubt. I give it to the man accused—Judge Thomas.

Over the years, the tenet "innocent until proven guilty" has become a cornerstone of America's legal system and in fact, is synonymous with democratic values. To deny this right to Judge Thomas, would be to deny him the same treatment that every American is entitled to.

In announcing my support for Judge Thomas on the first of October, I recognized his life and legal experience as factors that would ultimately serve him well as a Supreme Court Justice. Those beliefs have not changed, in fact they have become even stronger.

Judge Thomas has endured this process with dignity, with courage and with grace. I have no doubt that his service on the Supreme Court will be marked by a reliance on these same characteristics that have served him so well during these past days.

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to restate my opposition to the confirmation of Clarence Thomas to be Associate Justice of the Supreme Court.

One week ago, before the postponement of today's vote, I elaborated at length on my decision to oppose Judge Thomas—so I will not go on at length today. My opposition was based upon his record at the EEOC, his lack of concern for the rights of the elderly, his legal credentials, the views expressed in his speeches and writings, and his testimony before the committee.

Everything in Judge Thomas' record suggests that he will be an active and eager participant in the current Supreme Court's ongoing assault on established court decisions protecting civil rights, individual liberties, and the right to choose. Judge Thomas' refusal to discuss that record with the committee in a candid and straightforward manner confirms my concern that he will move the Court in the wrong direction.

Mr. President, the past several days have been some of the most difficult that I have experienced as a Member of the U.S. Senate.

The recent hearings into the charges of sexual harassment leveled against Judge Thomas were painful, exhausting, and tortuous for everyone involved in them. I think my colleagues on the committee will agree that one would have to look long and hard to find that anything good resulted from these unprecedented proceedings. This was an ordeal.

However, it is ridiculous even to attempt to compare anyone's suffering in this matter with the horrible and destructive experiences of both Professor Hill and Judge Thomas. And after listening to them both testify—both forceful, both articulate—it is almost impossible for me to fathom how one of these people could be the cause of the other's pain.

When I heard Judge Thomas speak to our committee, he was persuasive—I found myself wanting to believe him.

But when I heard Anita Hill testify to our committee, I was deeply moved. When I heard her, she was calm, sincere, very believable. I cannot imagine that she was telling us anything but the truth.

It was an outrage, Mr. President, that the committee's confidential documents were leaked to the press. In that connection, I have asked for and will support an investigation into that matter.

There is no argument that these hearings will be remembered as unfortunate, unsenatorial, and at times, just plain ugly. Inappropriate things were said and done, allegations and innuendo and malicious charges were tossed about with regard to Professor Hill, those charges were in my opinion unfair.

Issues were raised that had nothing to do with whether or not Anita Hill was telling the truth about Judge Thomas.

On a personal note, I want to say a word about the hearings. If a Senator is to fulfill his responsibility as a member of the Judiciary Committee, he ought to be judicious. At one point in the hearings, I was not. While questioning Mr. Doggett, I unfairly asked him questions about allegations lodged against him. I should not have done that—it was not fair to him—and I apologized by personal letter to him that same day.

Mr. President, I will oppose Judge Thomas for the reasons I have set forth here today, and for the reasons I have stated previously in the committee and here on the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield 3 minutes to the distinguished Senator from New Mexico.

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

Mr. DOMENICI. Mr. President, I am going to vote for the confirmation of the nominee of the President. I want to note that Clarence Thomas is perhaps the most investigated nominee to the Supreme Court in America's history. He has had five FBI background investigations inquiring into every conceivable aspect of his life: his character, his education, and his personal behavior under almost all circumstances. He has withstood this, and he has understood the extraordinary inquiry and, in my opinion, he has emerged unscathed. How many of us could say the same, if such an investigation had been conducted of us?

Mr. President, if I were convinced that the charges by Prof. Anita Hill were true, I would vote against the nomination of Clarence Thomas for the Supreme Court. The charges were serious, in my view.

However, the Clarence Thomas described by Anita Hill is not the Clarence Thomas I watched endure the 100-day plus inquiry by the Senate Judiciary Committee. I did not recognize Anita Hill's Clarence Thomas in any aspect from what I personally saw during the hearings. Anita Hill's Clarence Thomas is not the Clarence Thomas the FBI investigated. He is not the Clarence Thomas that Senator DANFORTH had worked closely with over all these years.

Whatever Anita Hill has claimed about Clarence Thomas, no one else who has every known him supports her description, nor believes that he is capable of the actions she has alleged. No one who supported Anita Hill's allegations with any specificity or with any particularity appeared in the Judiciary Committee hearings supporting her notion of him. Even those who declared themselves supporters of Professor Hill know nothing of the alleged particulars. Indeed, no one who has spoken under oath confirms any of the allegations made by Professor Hill.

Some of my colleagues have asked why Professor Hill would make these charges 10 years after the alleged occurrence, after she transferred to a new workplace with the one who allegedly harassed her, and after she had helped the person with confirmation hearings.

I cannot answer that question. Nothing I have seen in the FBI record, and no one I have heard talk of Clarence Thomas, and nothing I saw during the

last 3 days of the Judiciary Committee hearings confirms, in any way, the allegations made by Professor Hill.

Some will say that in the absence of persuasive evidence to the contrary, we should come down against Clarence Thomas. I do not think that is the case. I believe that by his demeanor during this ordeal this past week, he has positively affirmed his qualifications to be an Associate Justice of the Supreme Court. I will vote for him.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I will momentarily propound a unanimous-consent request which has been cleared by the distinguished Republican leader. I ask unanimous consent that the time consumed in my so doing not be charged against either side.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that on Wednesday, October 16, at 10:15 a.m., the Senate proceed to the consideration of the veto message on S. 1722, the unemployment benefits bill, and that it be considered under the following time limitations: Two hours for debate, to be equally divided between the two leaders, or their designees, and that at 12:15 p.m., without any intervening action or debate, the Senate vote on the question of the bill's passage, the objections of the President notwithstanding.

Mr. THURMOND. Mr. President, we have no objection.

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

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the Senator from Louisiana [Mr. BREAUX].

Mr. BREAUX. Mr. President, the process of confirmation is supposed to be one of advice and consent. In this case, very little advice was sought, which is why now so little consent is being given. This process must change.

I made an initial decision to support Judge Thomas' confirmation after meeting personally with Clarence Thomas, after hearing his testimony, and the testimony of both supporters and also his opponents. I also supported the delay in the vote because of the charges which are serious, and women, in particular, have a right to be protected against sexual harassment in their lives. It has no place in America and cannot be tolerated.

Essentially, Mr. President, we now have or are debating the character of Judge Clarence Thomas. Character, Mr. President, is not one incident, nor is it one sentence, nor is it even 1 day in the life of a person. Character is a composite; character is the totality of a person's makeup.

Here we have one person saying something very bad happened, and another saying, no, it did not. No one in this body can, with certainty, say who is right and who is wrong. To help us determine what is right, we need to talk with more than one person; we need to talk to many people who knew Clarence Thomas, who worked with Clarence Thomas, and who socialized with Clarence Thomas.

What do these people tell us? Mr. President, they tell us that Clarence Thomas was a man who treated his colleagues and his coworkers with respect and dignity—both men and women. When men committed sexual harassment, Clarence Thomas came down on them, and he came down on them very hard. He fired them. The people who knew Clarence Thomas, who worked with Clarence Thomas, say he is not the person that would insult and harass anyone.

Others who said that Clarence Thomas was a bad person basically had little or no personal knowledge or personal contact with him. They testified about what Prof. Anita Hill said about Clarence Thomas—hearsay only, no actual knowledge. It is wrong for us to seek and to search for one incident in a person's life, and when we find it, say: aha, we have determined his character, and his character is bad.

All of us have to get back to basics and to look at the total picture, the complete picture, to determine a person's character. Ralph Waldo Emerson said:

> Don't say things. What you are stands over you the while and thunders so that I cannot hear what you say to the contrary.

I now suggest, Mr. President, that years of action and years of performance by Clarence Thomas indicate that we have a man of character, a man who deserves to be confirmed by the U.S. Senate.

Mr. President, the search and destroy mission should end; the confirmation should begin.

The PRESIDING OFFICER. Who yields time?

Mr. KOHL. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, the Senate and the country have been considering this nomination for a long time. We would need a good deal longer to understand everything, but the schedule will not allow that. We will vote tonight. So let me share some of my thinking with you.

Three weeks ago, I voted against the confirmation of Clarence Thomas, when the Judiciary Committee considered his nomination. I will do so again today. My opposition then, and now, is based on my belief that he is not qualified, on judicial grounds, to serve on the Supreme Court.

I spelled out my concerns in a statement on the Senate floor on September 26, which I ask appear at the conclusion of these remarks. (See Exhibit 1, Mr. KOHL.)

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

Mr. KOHL. In spite of the drama of the last week, we cannot forget that this is more than a vote about Clarence Thomas' guilt or innocence on the charge of sexual harassment, more than a vote about whether he was treated fairly or not. This is a vote about whether or not he is qualified to serve on the Supreme Court.

I do not think he is.

Let me tell you why I voted against him in committee.

Judge Thomas lacked a comprehensive judicial philosophy—he did not articulate a clear vision of the Constitution. After listening to him and reading his statements and speeches, I was unable to determine what views and values he would bring to the bench. I also expressed concern about his lack of legal curiosity. Judge Thomas told the committee that Roe versus Wade was one of the two most significant decisions in the last 20 years. Yet he also said that he had never discussed that decision with anyone, and had no views about it.

I also noted that Judge Thomas demonstrated a limited level of legal knowledge. When asked questions of law, many of his replies were disappointing. In contrast, Justice Souter displayed a wealth of constitutional understanding at his confirmation hearings.

Judge Thomas had a full opportunity to tell the committee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his elevation to the Supreme Court. He failed to do that. And, as a result, he failed to win my consent to his confirmation.

But, of course, now the charge of sexual harassment has to be factored into a decision.

After 3 days of hearings, all anyone can know for sure is that someone is lying, flat out lying, lying under oath and lying in front of the American people.

And we do not know who it is.

Judge Thomas vigorously, passionately and categorically denies the charge. The witnesses who testified on his behalf all tell us that it is inconceivable for him to have done the things he is alleged to have done.

Professor Hill is also a most credible witness. Her account is tellingly detailed. Her behavior suggests that her motive was not to advance a political cause, or satisfy some personal need other than to tell the truth as she saw it. And witnesses told us that she spoke of the alleged harassment at the time it was supposed to have occurred, nearly a decade ago.

Both Judge Thomas and Professor Hill tell convincing stories. Yet neither

is fully believable. And in the end, we do not know what actually happened.

But we do know that one of them lied. We do know that one committed perjury. Given that fact, I am frankly amazed that we are going to vote today at 6 p.m. Every objective person must agree that the evidence is inconclusive, the facts are murky, the truth is unknown. There is, then, at least a possibility that we may be placing a man on the Supreme Court who has committed perjury, which is a criminal act.

While we all want to get this over with, in my judgment, we should not be taking that chance.

But we will. We will, Mr. President, because politics, once again, has overcome the search for truth, because the need to win has become more important than the need to serve the best interests of our Nation, because we have a schedule to keep instead of a Nation to govern.

I think we tried to get at the truth in these hearings. But we did not get the whole story. In part, that was because Judge Thomas did not address the issue at hand. Instead, he continually tried to shift attention to complaints about a conspiracy and charges of racism.

Even if those concerns were true—and I do not for one minute believe they are—they do not respond to a charge of sexual harassment. As to conspiracy, I would simply say that, given the fact that Professor Hill told people about these allegations nearly 10 years ago, that is absurd on its face. As one witness told us, she would have to be a prophet to come up with a plan like that. And as to racism, that is without merit. Professor Hill has a commitment to conservative causes, she supported the nomination of Robert Bork to serve on the Supreme Court, and she is obviously proud of her heritage as an African-American.

So, Mr. President, here we are, not happily, not enthusiastically, but here, nevertheless, at the point when a decision must be made.

But we are also at a point when the American people will make a decision about the nature of their Government and its credibility. Based on the calls coming into my office, I am afraid of what that verdict will be.

I understand and share their anger. But I do not fully share their conclusion.

I would remind people that initially the Senate Judiciary Committee conducted a serious and dignified debate about Judge Thomas' qualifications, a debate which Judge Thomas himself said was "a very fair one."

Still, having said that, I fully recognize that there were failures in the process.

Perhaps the hearings on the sexual harassment charges should have been held in closed session—but Judge Thomas never requested that. So the hearing was public. And it was not perfect. In fact, it was often ugly. But not holding hearings would have been even worse. That would have been unfair to Judge Thomas, Professor Hill, and the American people.

But I will tell you this: politics played too big a role. The President failed to nominate the best qualified candidate in order to score political points. The candidate failed to be forthcoming during his confirmation hearings. The Senate failed to approach the nomination in a non-partisan way. A Supreme Court nomination should not be decided on a partisan basis. It should be a decision based solely on the best interests of the country.

Mr. President, a week ago, the votes were there to confirm Judge Thomas. I did not agree with that decision, but I accepted it.

But someone did not.

Someone leaked confidential information. Some person, and some groups, decided that the decision made by Professor Hill, the leadership, and the Senate was not good enough for them. Someone decided to use whatever means necessary to thwart the will of the majority and the rights of an individual, in violation of the Senate rules, in violation of the wishes of Professor Hill, in violation of any sense of decency.

The democratic process did not entirely fail here—some people failed to understand the democratic process.

They acted on a philosophy which is endemic throughout the country: a philosophy that too often fails to respect the integrity of the democratic process, which seeks to short circuit it by financial contributions from special interests, which seeks to circumvent it by seeking special privileges, which condones the notion that we can have everything we want without paying for it.

Mr. President, at some point, if this Government is to have credibility, we must conduct ourselves so that we can serve as leaders of this Nation rather than just as a mirror of its ugliest and least appealing features.

This is not directly relevant to the Thomas nomination, but it is relevant to our ability to have whatever decision we make on that nomination accepted by the American people we have been elected to represent and seek to lead.

Thank you, Mr. President. I yield the floor.

EXHIBIT I

[From Cong. Record, September 26, 1991]

NOMINATION OF CLARENCE THOMAS

Mr. KOHL. Mr. President, when a vacancy develops on the Supreme Court, there is always a flurry of talk about what standards the Senate ought to use as it discharges its advice and consent responsibilities. That theoretical discussion, however, soon submerges when the name of the nominee is announced by the President. Then we forget theory and turn to speculation about what the nominee's record tells us about his or her views and what the prospects are for confirmation.

In my opinion, Mr. President, we would be better served if we engaged in that process from the perspective of some clearly articulated standards of judgment.

The Constitution allows each Senator to apply any standard they wish. My standard is simple: judicial excellence. In my judgment, any nominee to the Supreme Court of the United States—the Court which interprets our Constitution and protects our liberty—must be exceptional.

When a President nominates someone to serve in the executive branch, we owe some deference to his desires. Absent compelling evidence to the contrary, the President is entitled to have the people of his choice serving in his administration and implementing his policies. But the Supreme Court represents a coequal and independent branch of Government. It is not an extension of the executive or the legislative branch. It serves neither; it applies the Constitution to both. Therefore, a President's nominee has no presumption operating in his or her favor; instead, the nominee accepts a burden of proof—a burden to demonstrate to the Senate that he or she ought to sit on the Supreme Court, that he or she deserves a lifetime appointment.

Over the past 43 years, Clarence Thomas has demonstrated many admirable qualities. He has demonstrated that he is a man of great character and courage. He has demonstrated that he has the strength to triumph over adversity. He has demonstrated that he has retained his sense of humor and that he deserves the respect and admiration of his many friends.

In my judgment, however, Judge Thomas has not demonstrated that he ought to sit on the Supreme Court. Let me tell you why.

First, Judge Thomas lacks a clear judicial philosophy. Less than 2 years ago, when Judge Thomas was nominated to serve on the appeals court, he told us that he did not have a fully developed constitutional philosophy. That did not disqualify him for a low court, which is required to follow precedent. But the Supreme Court creates precedent—it interprets the Constitution in which we as a people place our faith, and on which our freedoms as a nation rest. So it was my hope that during the hearings, Judge Thomas would articulate a clear vision of the Constitution—ideally, one that included full safeguards for individuals and minorities, and which also squared with his past positions. Unfortunately, after spending 5 days listening to Judge Thomas testify, I was unable to determine what views and values he would bring to the bench.

Second, Judge Thomas demonstrates selective recall. Judge Thomas asked us to heavily consider his experiences as a young man while at the same time he asked us to discount views he expressed as an adult. He told us that his musings about natural law, his endorsement of treating economic rights on par with individual rights, and his dismissal of almost all forms of affirmative action as a remedy for discrimination were not relevant. These policy positions, he asserted, would have no impact on his decisions on the Court. In fact, he suggested a judge should shed his views just as a runner sheds excess clothing before a race.

This approach troubles me. In my opinion, it is totally unrealistic to expect that a Justice will not bring his values to the Court.

Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justice Rehnquist wrote:

Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa [blank slate] in the area of Constitutional adjudication would be evidence of lack of qualification, not lack of bias.

I agree with the Chief Justice: Either we judge Clarence Thomas on the complete record or we do not look at the record at all.

Third, Judge Thomas engages in oratorical opportunism. Judge Thomas crafted policy statements apparently tailored to win the support of specific audiences—and then later repudiated these very same positions. For example, when speaking to the Federalist Society, he said that the natural law background of the American Constitution provides the only firm basis for a just, wise, and constitutional decision. Yet during the hearings he steadfastly maintained that natural law played no role in constitutional adjudication. He told another audience that Lew Lehrman's article opposing abortion was a splendid application of natural law. Yet at the hearings he said he had only skimmed the article and never endorsed Mr. Lehrman's conclusions. I find this disturbing.

Fourth, Judge Thomas' lack of legal curiosity is troubling. Judge Thomas told the committee that Roe versus Wade was one of the two most significant decisions handed down by the Supreme Court in the last 20 years. Yet he also told the committee that he had never discussed that decision, either as a lawyer or as an individual, and had no views about it. If we accept that claim, it raises unanswered questions about the depth of his interest in legal issues.

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his replies were disappointing—whether involving antitrust, the War Powers Act, freedom of speech, the right to privacy of habeas corpus. In contrast, at his confirmation hearings, Justice Souter displayed a wealth of constitutional understanding in all of these areas. Judge Thomas lacks this depth of judicial knowledge. But that is not surprising for, after all, he has been an appellate court judge for less than 2 years and prior to that he was a policymaker. While his level of expertise is acceptable for an appellate court, it is not sufficient to meet the demands that are made of a Supreme Court Justice.

Frankly, I expected Judge Thomas to resolve my concerns during the hearings. But, for whatever reasons, he was extremely guarded in his appearance before the committee. His answers were less than forthcoming and often not responsive to the questions he was asked. Judge Thomas did not—and should not—tell us how he would rule on Roe or any other case. But he could and should have told us how he would approach those cases. Judge Thomas had a full opportunity to tell the committee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his elevation to the Supreme Court. He failed to do that. He failed to discharge his burden of proof. He failed to demonstrate the level of judicial excellence which ought to be required on the Supreme Court, and as a result, he has failed to win my consent to his confirmation.

However, I expect that he will win the approval of a majority of my colleagues. Their support for his nomination will, I suspect, be based on the hope that Judge Thomas will continue to grow as a jurist and develop as a person. I may not share their vote, but I do share their hope. Clarence Thomas is a man with the ability to inspire in even those who will not vote for him the hope that he will, if confirmed, become what we all want him to become: an outstanding Justice.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. I yield to the Senator from New York 2 minutes.

The PRESIDING OFFICER. The Senator from South Carolina yields to the Senator from New York 2 minutes.

Mr. D'AMATO. Mr. President, I rise to support the nomination of Clarence Thomas to the Supreme Court. Like most Americans I have tried to determine whether the very grave allegations against Clarence Thomas were true.

I believe that the burden of proof in this case, and in all cases, rests with the accuser, not the accused. And clearly that burden has not been met. It is a fundamental tenet of our system that everyone is innocent until and unless proven guilty.

Before these allegations, I supported Judge Thomas' elevation to the Supreme Court on the merits, and I continue to do so. But I would be lax if I did not take this opportunity to express my dismay with the confirmation process.

Notwithstanding Chairman BIDEN'S efforts to see to it that fairness was afforded to all, the confirmation process has run amok and all of us have become victims. Judge Thomas has been its victim, Professor Hill has been its victim, and we in the Senate have been its victim.

Judge Thomas' testimony when he told us how he lost his reputation after being a target of unsubstantiated allegations hit home with this Senator. More than most, I understand how that feels. Even raising allegations such as these puts the accused through a living hell. Justice Thomas had the opportunity to defend himself, the American public found his defense convincing, but many do not have that ability. I am afraid that we have reached a point where any allegation is deemed proof of guilt, and that is wrong and it is un-American.

I believe that Judge Thomas will be confirmed later today. And I applaud that. But I believe that we in Congress have a duty to see that this process is not repeated. When anyone becomes the victim of unsubstantiated allegations, we are all the victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 1 minute to the distinguished Senator from Missouri.

Mr. BOND. Mr. President, I previously have taken the floor to say that I know Clarence Thomas to be a man of integrity, character, great ability, and great intellect. However, despite the fact that we had hearings, which should not have been held in public, and information was leaked, I felt it was necessary that we have a hearing on the allegations made against him and I reviewed the FBI reports and the testimony.

I find serious inconsistencies in Professor Hill's statements and testimony. She said she was traumatized, yet she followed him from the Department of Education to the EEOC. She continued to maintain favorable comment and contact with Clarence Thomas and even, according to two sworn witnesses, spoke highly of his nomination in August.

I believe that the charges against Judge Thomas are unsubstantiated. We must not ruin his character.

Mr. President, the events of the past week have been a sad spectacle. A travesty was made of the Senate's confirmation process—one of its most important duties. Hearings and investigations that should have been handled in private, in closed session, were conducted on national television. Instead of the sober review of the facts that we deserved, we instead got a circus.

We arrived at that point—as we all know—because of a leak by someone who works in this body. That, Mr. President, is an outrage. It is an action that diminishes the public perception of this body; and the person responsible must be identified and punished. I was pleased to hear the majority leader this morning say that he intends to pursue the matter.

Despite these reservations about how the Senate got to this point, I approached the hearings, the testimony, and the evidence with an open mind. The allegations, if they were true, would be sufficient for me to oppose the nominee. It has been our duty to review them carefully and fairly. Judge Thomas, Professor Hill, the Supreme Court, and the American people deserve nothing less.

Unfortunately, the weekend hearings did little to advance a conclusive understanding of what actually happened. Still, Senators must make a judgment and they must cast their vote at 6 p.m. today.

After viewing the hearings, reviewing transcripts of the testimony, and reading the classified FBI reports and other materials, I have reached the following conclusions.

I found serious inconsistencies throughout Ms. Hill's testimony that lead me to conclude, relative to the accusations made, that we must find in favor of Judge Thomas.

Just a few examples: She said she followed Judge Thomas from the Department of Education to the EEOC because she was concerned that she would not otherwise have a job. That just does not seem credible given testimony showing that not only was her

job protected under the law, but that Thomas' successor at Education assured that he would keep her on.

Ms. Hill says she was traumatized by the alleged actions of Judge Thomas, yet it is clear that she maintained contact with him over the past several years. According to the testimony of Dean Kothe of Oral Roberts Law School, she was even extremely cordial with Thomas when the three of them were together.

Also, though Ms. Hill first called the phone logs of her calls to Judge Thomas "garbage," she later admitted that they were accurate records of what actually took place.

Two witnesses testified under oath that Professor Hill had initiated favorable discussions about the Thomas nomination in August of this year; yet she testified to the contrary.

Given these inconsistencies, and given the absolute, unequivocal denial by Judge Thomas that the incidents ever took place, I believe we must give greater weight to his testimony. Judge Thomas' life has been intensely scrutinized by this body five times. He has been confirmed for high Government office four times. He is a man that I know to be of the highest integrity. It would be a travesty to destroy him with unsubstantiated charges. That is the way our system works—a person is innocent until proven guilty.

Thus, Mr. President, I intend to cast my vote to confirm Clarence Thomas. I believe he will make an excellent Associate Justice of the U.S. Supreme Court.

I remain hopeful that we will find a way to improve this process so that future nominees will not be subject to this same type of circus and so that this body can do a better job of fulfilling its critical confirmation role.

I ask that my colleagues support the nomination of Judge Clarence Thomas to be an Associate Justice.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Delaware yields 2 minutes to the Senator from Rhode Island.

Mr. PELL. I thank my colleague from Delaware.

On Tuesday, October 3, I announced my decision to oppose the confirmation of Judge Thomas to be an Associate Justice of the U.S. Supreme Court. This was prior to public hearing of Prof. Anita Hill's allegation of sexual harassment.

Today, 10 days later, and after the hearings into this matter, I see no reason to change my vote and I will oppose the confirmation of Judge Thomas when that vote is taken shortly.

Regarding the hearings on the charges of sexual harassment by Judge Thomas, I can only say that having watched the proceedings these past few days I do not know whether Anita Hill or Clarence Thomas is telling the truth. I did believe that, given the seriousness of charges involved, it was appropriate to delay the confirmation vote last Tuesday, to hold hearings. I believe, too, that these hearings were conducted in a fair, judicious manner, and I commend Senator BIDEN and the Judiciary Committee for their work.

However, my original reasons for opposing the nomination of Clarence Thomas—namely, the lack of demonstrated judicial distinction and exteremely conservative philosophy already well represented in the Court—are independent of any determination of Judge Thomas' guilt or innocence regarding this matter.

Accordingly, I see no reason to change my decision, and I speak, too, as one who voted for the confirmation as Justice of every present sitting Justice on the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from Delaware yields 4 minutes to the Senator from California.

Mr. CRANSTON. Mr. President, I was the first Senator to rise in opposition to this nomination. I did so before I ever heard of Anita Hill.

I came out against confirmation because Judge Thomas had no clear or distinguished record on fundamental issues upon which his qualifications could be judged and because he refused to reveal his general philosophy on many of those issues to the committee.

I also came out against Judge Thomas because I doubted his veracity when he declared he never discussed Roe versus Wade with anybody.

I watched the Hill-Thomas hearings on TV and now my opposition to the nomination and my doubt about the judge's veracity are much stronger.

I differ with those who assert that the burden of proof rests on those who charge Judge Thomas with sexual harassment. This is not a criminal case where he faces jail. The burden is on Judge Thomas and his supporters to prove that he is fit to serve on the U.S. Supreme Court.

I urge my colleagues to consider, as I have, the following facts:

None of Judge Thomas' character witnesses had any personal knowledge relevant to the charges against him, but four witnesses appearing for Anita Hill did have personal knowledge relevant to the charges.

Two of them testified that Miss Hill told them about the alleged sexual harassment by Judge Thomas long ago. Two of them testified that Miss Hill told them that her supervisor made sexual advances. Her detractors suggest she was speaking about somebody else, not about Judge Thomas. But it turns out her only other supervisor was a woman, Alison Duncan.

Angela Wright, like Anita Hill, has accused Judge Thomas of making sexual remarks to her and pressing her for dates. Also like Anita Hill, Miss Wright confided about this to a friend, Rose Jourdain, according to a sworn statement by Miss Jourdain.

Lovida Coleman, Jr., stated that when Judge Thomas was at Yale he discussed with her and others X-rated films he had seen.

Another woman, Sukari Hardnett, a former special assistant to Judge Thomas, has come forward to complain about the atmosphere in his regime at EEOC, stating: "If you were young, black, and reasonably attractive, you knew full well that you were being inspected and auditioned as a female."

It is worth noting that the alleged remark by Judge Thomas about hair and coke need not have originated—as suggested by his supporters—in a book he says he never read, "The Exorcist." According to Catherine MacKinnon, an attorney who is an expert on sexual harassment, quoted in the October 4 New York Post, the alleged remark was a clear reference to scenes in pornographic films.

It's also worth noting that another article in the October 12 New York Post indicates that the source of Judge Thomas' alleged remark about one Mr. Silver may not—as has been suggested by the Judge's supporters—have come from a court case but rather could have come from a pornographic film, peep show, or magazine.

Some think that, after all this, there will be greater understanding of sexual harassment and how to cope with it.

I wonder?

The lesson may be that if you complain about sexual harassment you will be attacked as a liar, a fantasizer, or a woman scorned.

A great lack of understanding of a woman's reaction to sexual harassment is on display.

Suppose you are a woman representing a cause or corporation on Capitol Hill.

Suppose a Member of Congress sexually harasses you, as does happen.

What do you do?

You have these choices;

First, publicly complain, and get attacked, as Anita Hill was attacked when she came forward.

Second, avoid having anything to do with the harasser forever after and end your capacity to represent fully the cause or the corporation, and perhaps lose your job.

Third, seek to maintain a cordial relationship with the harasser so you can retain your job. That is the choice Anita Hill made at the time the alleged harassment was occurring. And look at the personal attack she is suffering be-

cause of that choice, now that she has come forward.

These are sorry choices for women to face.

And it is a sorry choice we Senators face today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 4 minutes to my friend from Alabama.

The PRESIDING OFFICER. The Senator from Delaware yields 4 minutes to the Senator from Alabama.

Mr. HEFLIN. Mr. President, the tumultuous events that have just occurred since the first set of hearings were completed, culminated in the extraordinary last set of hearings before the Senate Judiciary Committee concerning the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court, are a tragic result of unauthorized and unwarranted leaks of a committee investigation.

This is not the first time leaks have occurred, and leaks are not confined to any one particular committee or party—they have occurred on both sides of the aisle. The leaks, in the case at hand should be thoroughly investigated and those found responsible should be held accountable, as well as recent past leaks in the Senate Ethics Committee.

I entered into the first set of hearings on Clarence Thomas with an open mind. I have always approached judicial confirmation hearings as a judge rather than as an advocate. I have endeavored at all times to be fair to the nominee, fair to the President, fair to the nominee's opposition, and fair to the American people. I came away from the first round of hearings with many doubts in my mind about Judge Thomas; and I stated that Judge Thomas' answers and explanation about previous speeches, articles, and positions raised thoughts—and I emphasize thoughts—not findings—of confirmation conversion, of inconsistencies, ambiguities, contradictions, as well as other thoughts.

I listed, in my speech before the Senate in which I announced that I would vote against him, many of those factors that had created doubt in my mind about whether he should be confirmed.

I stated that our Nation deserved the best on the highest court in the land, and an error of judgment could have long-lasting consequences to the American people. The doubts were too many. The Court is too important. So I said that I would follow the admonition "when in doubt—don't."

At the time that I made my speech on the floor of the Senate announcing my decision to vote against Judge Thomas, I had never heard of Anita Hill and her charges of sexual harassment. Following my speech I was informed for the first time about Anita Hill. The issue of Anita Hill and her allegations of sexual harassment did not enter into my decision on whether or not to vote against him.

Now the second set of hearings has occurred. I have now more doubts. The original doubts have been compounded by the doubts raised in the hearing. I will not attempt to enumerate all of these newly created doubts; but obviously there are doubts about who is telling the truth, doubts about motivation, doubts about psychological defects about both Professor Hill and Judge Thomas.

Throughout both sets of hearings I have tried to be a judge rather than an antagonistic advocate. I think this is the role that an independent-minded member of the Judiciary Committee should assume. I have approached every confirmation hearing that I have participated in from the position that I ought not to be partisan. I do not think I ought to rubberstamp the nominees of the President, and neither do I feel that I ought to blindly follow a partisan allegiance. It has been my position that an independent evaluation of the evidence is the appropriate approach to take. I have endeavored to do so in this case.

My job at the hearings was to get the facts and find the truth the best way I possibly could.

I simply chose to use my time effectively—to ask questions and not give political speeches. My responsibility was to judge—not be a cheerleader for or against Clarence Thomas.

As a result of the first hearing there were many clouds hovering over the process and Clarence Thomas. During the second set of hearings clouds thickened considerably over the Senate, the process, and Clarence Thomas. In addition to this, very thick clouds hover over Anita Hill. In my judgment, clouds should not hover over the Supreme Court. The clouds and doubts should not be transferred to the Supreme Court. The Supreme Court is too important. As I have said before, our Nation deserves the best on the highest court in the land. Some want to give Clarence Thomas the benefit of the doubt. I think that would be very appropriate if he was charged in a criminal setting in a court of law. This is not a criminal trial.

The doubts are many. There is an absence of clear and convincing evidence to remove these doubts. A lifetime appointment on the Supreme Court is different from other appointments. Unless those doubts are erased, eliminated, or greatly minimized, we should not gamble on the consequences. In my judgment, Clarence Thomas should not be confirmed under the clouds and doubts created. Therefore, my position has not changed. I will vote against his confirmation.

I would also like to say that I fully support a thorough and complete investigation in regard to the leaks in this matter as well as leaks that have occurred in the Senate Ethics Committee. I think the Senate cannot continue to operate under a situation in which there are constant leaks.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield 3 minutes to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator.

The serious charges made by Professor Hill are important and a vital part of this consideration. But this nomination need not rest on a determination of that matter.

The basic issue here is plain and simple legal qualification, and the suitability of this nominee to hold a lifetime appointment to one of the highest offices in our land.

These exalted and rare positions should go to men and women of all races and ethnic backgrounds on one basis and one basis alone, and that is exceptional qualification, towering legal ability and achievement, professional standing within the legal profession of the very highest rank. To settle for less trivializes the Court and threatens to turn it into a privileged sanctuary for persons who lack such qualifications and who may instead have some narrow ideological agenda of their own to pursue.

Clarence Thomas has a record of a decade of bizarre and questionable legal theories and policy positions that he has spoken numerous times, views he suddenly said at his confirmation hearing that he really did not mean or that he no longer believes.

His professional record at the EEOC was erratic and highly controversial and damaging to the rights of thousands of people who brought forth complaints of workplace discrimination. The appearance is that he stepped on the rights of others to please the higher-ups in the Reagan administration and advance himself.

I believe in affirmative action and that people of color should serve our Federal judiciary. But any nominee—regardless of race, sex, or ethnic background—must meet the absolute standard of highest professional qualification unique to the highest court in our land. At age 43, with very limited courtroom experience, Clarence Thomas does not meet this standard.

The American Bar Association has a process whereby the most distinguished lawyers in America carefully evaluate the formal legal credentials and qualifications of Supreme Court nominees. Since 1955, they have assessed now 23 different Supreme Court nominees in that process.

You know where Clarence Thomas ranks among those 23 in legal qualification? He ranks dead last. The lowest rating of any Supreme Court nominee in history. What a sad commentary.

It says volumes about the purpose of the Bush administration when selecting this nominee. The clear appearance here is that the qualification he had was political, not based on his professional qualifications. It appears he was selected despite his lack of professional qualifications because he was a black ultraconservative, young enough to apply that extreme philosophy to the Court's decisions for the next 40 years. And that is going to affect the rights and liberties of every single person in this country perhaps as long as the next four decades.

It is just as simple and as crass as that. And the nomination should be rejected on those grounds.

Mr. BURNS. Mr. President, In my short tenure as a Member of the U.S. Senate, I have never experienced a week such as this last one. I am not sure even the so-called old timers have ever witnessed such a week. I would say all of us have run the full scale of our emotional ladder.

Those of us who do not serve on the Judiciary Committee have watched every minute of the proceedings since last Friday. We have recorded those proceedings on our home VCR's, took notes, watched faces, and agonized with the members of the committee.

I want the RECORD to show how appreciative this Senator is of Senator JOE BIDEN, chairman of the Judiciary Committee. No chairman in my short tenure as a Member of the U.S. Senate has worked in a more charged atmosphere than his committee did in a situation created by unknown forces; and he was remarkable in his fairness. I commend him and thank him.

I think all would agree that the debate on whether Judge Clarence Thomas should or should not be confirmed to the highest Court in this country had been centered around rights prior to this weekend. That should not come as a surprise to anyone in this body or any American. We deal with rights everyday on every piece of legislation. Rights—personal, property and human rights—are the very heart of the Constitution.

Sensitive to rights? You bet we are, or this Senator is. Does it concern me when voting on a person nominated to the Supreme Court of the United States? Even more so.

That is why it is important to point out that as confusing and terrible as the hearings this weekend were, some good has come.

As many have said already, a heightened awareness and discussion of sexual harassment in this country is a good thing.

But it is also a good thing that after what he has gone through, Judge Thomas, if confirmed, will be even more sensitive than before to people's rights.

Let me be clear. Prior to the hearings this weekend, I supported Judge Thomas because I believed he understands the truest meaning of rights.

The belief was reaffirmed for me and for the judge himself through the course of the allegations against him and the hearings that followed. He said himself when asked what he has learned through this experience:

> The other thing that I have learned in this process are things that we discussed in the real confirmation hearing, and that is our rights being protected, what rights we have as citizens of this country, what constitutional rights, what is our relationship with our government. And as I sit here on matters such as privacy, matters such as procedures for charges against individuals in a criminal context or a civil context, this has heightened my awareness of the importance of those protections, the importance of something that we discussed in theory—privacy, due process, equal protection, fairness.

Judge Thomas clearly understands the importance of these values now.

And so in fairness to the judge, and under the context of constitutional rights, I will continue to support him.

This weekend was an emotionally charge one, but we must remember that in this country a person is innocent until proven guilty. That is paramount in our judicial system. To change it is to destroy the very foundation of our society.

In my mind, Judge Thomas has not been proven guilty. When the hearings began, the presumption was with Judge Thomas because he was the accused, and the presumption remains with him today because the hearings were inconclusive in my mind and to many Americans.

There is nothing in Judge Thomas's character to indicate that he would behave in the manner described or to indicate that he is insensitive to women in the workplace. To the contrary, he had dozens of women with whom he has worked coming forward to praise his treatment of them.

Judge Thomas will bring to the Court a wealth of what is truly American—an understanding of the opportunities and rights afforded to each of us under the constitution—and I hope that my colleagues will vote to confirm him.

The PRESIDING OFFICER. Who yields time? The Senator from South Carolina.

Mr. THURMOND. I yield 8 minutes to the Senator from Wyoming [Mr. SIMPSON].

The PRESIDING OFFICER. The Senator is recognized for 8 minutes.

Mr. SIMPSON. Mr. President, I want to thank Senator JOE BIDEN and Senator STROM THURMOND for their extraordinary work. This has not been an easy task. Obviously, it has not. It has not been pleasant to go through the weekend and miss the things that you miss in a weekend in the fall.

I can tell you they did it with firmness and fairness and they were very patient and extraordinarily attentive to what we were trying to do, and I want to commend them both for such splendid work.

I am very proud to be a member of the Senate Judiciary Committee. I do not make any apologies for that at all. I do not know what more we could have done with the information which was furnished to us, with the way the principal woman witness furnished it to us, and that is the way it is. You cannot do or say things to other people and then say you want to keep it in confidence. They formed this country to get away from that kind of conduct.

Let us remember how this thing got started. Ms. Anita Hill did not want to provide her name and our chairman and ranking member protected her. And then she finally came forward and said let the committee see the information which she had. She said it does not have anything to do with sexual harassment. It has to do with his "behavior". She said please let the committee see that, but do not let the public see it. And we did that. And then somebody in this place, who surely will suffer some serious penalty, leaked that to the media. And then a member of the media read it to her and said "What do you think of this, it is all over town"—which it was not. And then that person said: "You either let us go with it or we will have to go with it anyway."

What a violation of professional ethics of the craft of journalism. Let me read you from the Code of Professional Journalism. They do not like to hear me read this because they think I am a media basher. I am not. I hear them chuckling. But I tell you what I am: I am like Harry Truman. I don't give them hell, I give them the truth and they think it's hell. That is what is wrong with them.

I have been treated exceedingly fairly by the media—always—in public life. And that goes to this very moment of time. All of my wounds with them are self-inflicted. Whenever I have done anything I did it completely to myself. But let me tell you what their code says.

It says under "Fair Play", page 3:

> Journalists at all times will show respect for the dignity, privacy, rights and well-being of people encountered in the course of gathering and presenting the news.
>
> 1. The news media should not communicate unofficial charges affecting reputation or moral character without giving the accused a chance to reply.

Do not ask me where I got this. Is this not weird stuff? It is their own Code of Ethics.

I shall continue:

> 2. The news media must guard against invading a person's right to privacy.

That is their code, not mine. I have not injected it upon them.

> 3. The media should not pander to morbid curiosity about details of vice and crime.
>
> 4. It is the duty of the news media to make prompt and complete correction of their errors.
>
> 5. Journalists should be accountable to the public for their reports and the public should

be encouraged to voice its grievances against the media. Open dialog with our readers, viewers and listeners should be fostered.

Do you really believe that?

So, people can chip about this process, they can carp, they can denigrate. It has been working for 203 years. It will continue to work. It is imperfect, assuredly, because we are imperfect. But in the atmosphere of America in these times when positive things are seldom reported upon, I can assure you in this land and as a public servant I am very fortunate to be here. I am privileged. We are lucky to be able to do this work. And for all the people that take the good shots at us—and that goes with the territory, I understand that—or hang us up to dry or use venom and invective, I have finally just come to say to them, "Look, I do the very best I can. The very best I know how."

I have tried to do that here. I think the chairman and ranking member tried to do that here. And I will just keep right on doing that.

It has been a roller-coaster. The critics are out. A critic is a product of creativity not their own. We should always keep that in mind.

So I want to place some material in the RECORD, because I, frankly, have become tired of the issue that somehow I personally am not responsive to the issue of sexual harassment—it is very clear in the hearing record exactly what I said about that. So I want to have printed now in the CONGRESSIONAL RECORD pages 235, 236, and 237 of the Senate Judiciary Committee hearing record of October 11, 12 and 13, concerning the full text of my remarks with regard to sexual harassment. And it will tell you exactly how I felt about that and how the issue had gotten all out of perspective. I said there "I believe it is a terrible thing," and I do. I put in a bill to double the penalty on sexual harassment long before this nomination ever came up.

So I don't have to have that test of purity with regard to that, or take my lumps in some way. I am not involved in that. It is a time of sound bites and snippets. It is interesting to see how that comment was accepted and I ask unanimous consent to print that in the RECORD.

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

The CHAIRMAN. Senator Simpson?

Senator SIMPSON. Well, it has been a powerful presentation by a powerful person. And I have known you for several years and I have known Ginny before I knew you. I think it is very well that you were not here to hear the testimony of Ms. Hill. That was a good step, whosever idea that was that you did not, of course, you were not here, but you didn't watch it. It would have driven you——

Judge THOMAS. Thank you.

Senator SIMPSON. ——in a way I do not think would have been appropriate. And here we are. You have been before us for 105 days. We have seen everything, known everything, heard every bit of dirt, as you call it so well. And what do we know about Professor Hill? Not very much. I am waiting for 105 days of surveillance of Ms. Hill and then we will see, you know, "who ate the cabbage" as we say out in the Wild West. This is an impossible thing.

And now, I really am getting stuff over the transom about Professor Hill. I have got letters hanging out of my pockets. I have got faxes. I have got statements from her former law professors, statements from people that know her, statements from Tulsa, Oklahoma saying, "watch out for this woman." But nobody has got the guts to say that because it gets all tangled up in this sexual harassment crap.

I believe sexual harassment is a terrible thing. I had a bill in a year ago, doubling the penalties on sexual harassment. I don't need any test. Don't need anybody to give me the saliva test on whether one believes more or less about sexual harassment. It is repugnant, it is disgusting in any form. And the stuff we listened to, I mean, you know, come on—from the moon.

And it is a sexual stereotype. Just like asking you sexual stereotype questions about your personal life, any woman would be offended by that—about your divorce, you did this, you did that. Talk about in reverse. There is not a woman alive who would take the questions you have had to take, would be just repelled by it. That's where the watershed is here.

It is a good thing that this awareness goes up. It is a terrible tragic thing that it should bruise you. And if we really are going to do it right, we are all mumbling about how do you find the truth? I will tell you how you find the truth, you get into an adversarial courtroom and everybody raises their hand once more and you go at it with the rules of evidence and you really punch around in it. And we can't do that. It is impossible for us to do that in this place.

The Chairman knows it and he has been exceedingly fair. And so here we are and we will not get to the truth in this process. But there is a truth out there and that is in the judicial system, Thank God, that there is such a system. It has saved many, many a disillusioned person who was headed for the Stygian pits.

So if we had 105 days to go into Ms. Hill and find out about her character, her background, her proclivities, and all the rest I would feel a lot better about this system. And I am talking about the stuff I am getting from women in America who are sending me things and especially women in Oklahoma. That will all become public. I said, at the time it would be destructive of her and some said, well, isn't that terrible of Simpson, a menacing threat. It was not menacing. It is true.

That she would come forward and she would be destroyed. She will, just as you have been destroyed. I hope you can both be rehabilitated. I have a couple of questions, if I may, Mr. Chairman.

The CHAIRMAN. Yes.

Senator SIMPSON. I have not taken time and I will get to that. Angela Wright will soon be with us, we think, but now we are told that Angela Wright has what we used to call in the legal trade, "cold feet." Now, if Angela Wright doesn't show up to tell her tale of your horrors, what are we to determine about Angela Wright?

Did you fire her and if you did, what for?

Judge THOMAS. I indicated, Senator, I summarily dismissed her, and this is my recollection. She was hired to reinvigorate the public affairs operation at EEOC. I felt her performance was ineffective, and the office was ineffective. And the straw that broke the camel's back was a report to me from one of the members of my staff that she referred to another male member of my staff as a faggot.

Senator SIMPSON. As a faggot?

Judge THOMAS. And that is inappropriate conduct, and that is a slur, and I was not going to have it.

Senator SIMPSON. And so you just summarily discharged her?

Judge THOMAS. That is right.

Senator SIMPSON. That was enough for you?

Judge THOMAS. That was more than enough for me. That is my recollection.

Senator SIMPSON. That is kind of the way you are, isn't it?

Judge THOMAS. That is the way I am with conduct like that, whether it is sex harassment or slurs or anything else. I don't play games.

Senator SIMPSON. And so that was the end of Ms. Wright, who is now going to come and tell us perhaps about more parts of the anatomy. I am sure of that. And a totally discredited and, we had just as well get to the nub of things here, a totally discredited witness who does have "cold feet."

Well, Mr. Chairman, you know all of us have been through this stuff in life, but never to this degree. I have done my old stuff about my past, and shared those old saws.

But I will tell you, I do love Shakespeare, and Shakespeare would love this. This is all Shakespeare. This is about love and hate, and cheating and distrust, and kindness and disgust, and avarice and jealousy and envy, all those things that make that remarkable bard read today.

But boy, I will tell you, one came to my head, and I just went and got it out of the back of the book. Othello, read Othello, and don't ever forget this line: "Good name in man and woman, dear my lord"—do you remember this scene?—"is the immediate jewel of their souls. Who steals my purse, steals trash. Tis something, nothing. Twas mine, tis his, and has been slave to thousands. But he that filches from me my good name, robs me of that which not enriches him, and makes me poor indeed."

What a tragedy. What a disgusting tragedy.

Mr. SIMPSON. How much time do I have Mr. President?

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. SIMPSON. Mr. President, it is fascinating to hear some of the commentary. I have already spoken on columnists who criticized our conduct.

One person, a columnist of the Washington Post, Richard Cohen, said I have "done a pretty good imitation of Joe McCarthy. The Wyoming Republican said he had good dirt on Hill and—there was nothing there."

Mr. President, it seems to me that accusing someone else of McCarthyism is really a McCarthyist tactic itself. There were other McCarthys. There was Charlie McCarthy. He was a dummy. I remember that and I will reserve that appellation for any scribe that would label me with that one. That is disgusting.

So I want to add this. If the media is uncomfortable with what happened

about Anita Hill, it is because some in the Washington media are guilty of the broadcasting and publishing to the world of her confidential statement, one she really wanted to hold back.

Finally, let me say that since some have addressed the issue of me saying that there was "stuff dumped over the transom," let me now dump it over the transom into the CONGRESSIONAL RECORD. Because of those cowardly charged headlines and baiting, I want to put it in the RECORD at this point, letters and statements which our committee received over the transom—I or staff have talked to many of these people here—and we did not hear them in person.

I ask unanimous consent that these documents from lawyers in Oklahoma and people around the country be printed in the RECORD.

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

MATTHIES LAW FIRM, P.C.,
Tulsa, OK, October 12, 1991.

Re Anita Hill background.

SENATE JUDICIARY COMMITTEE,
U.S. Senate,
Washington, DC.

DEAR SIRS: On the afternoon of October 11, 1991, I went to the conference room of another law firm in my office building to watch a portion of the hearings during which Ms. Hill was being questioned. Also present were two or three young women lawyers who had recently graduated from the University of Oklahoma Law School, and who had Ms. Hill as an instructor during the time that they attended law school.

These young women stated that Ms. Hill was a very aggressive and ambitious woman, who was very outspoken with respect to her views. This trait was reportedly present in Ms. Hill to such excess that these women lawyers characterized her as a "bitch". Ms. Hill also reportedly was not a very good teacher, and was not considered to be a person of very high intellect. One of the women lawyers stated that Ms. Hill even had difficulty responding to questions of First Year law students, and commented that "If she could not even answer the questions of First Years, who don't know anything, this should give you a good idea of her abilities".

Ms. Hill also reportedly was considered to be overly ambitious and a vicious in-fighter by these women. They described an incident where there had been a very popular visiting professor (male) who was teaching contracts. Ms. Hill reportedly wanted to teach that course very much, and reportedly did her best to insure that this teacher was not invited to become a part of the permanent law school staff by attacking him both personally and professionally. As a result of Ms. Hill's attacks, this male professor left the University of Oklahoma law school, and Ms. Hill then took over the teaching of the Contracts course which she had wanted to teach.

I am in the process of attempting to contact these women to ascertain if they would be willing to repeat to the Committee what they told me privately yesterday. I swear under penalty of perjury that I have accurately reported their statements, to the best of my knowledge and belief.

MARY CONSTANCE T. MATTHIES.

Irving, TX, October 8, 1991.

Senator STROM THURMOND.

DEAR SENATOR THURMOND: I am currently the Associate Dean for Academic Affairs and an Associate Professor at the Dallas/Fort Worth School of Law. Prior to coming here, I was on the faculty at the University of Oklahoma College of Law. Anita Hill was a colleague of mine in Oklahoma.

My personal impression of Anita Hill was that she is a detailed, cold, and calculating person. Students commented to me that she was particularly ineffective in class and was not concerned about improving her performance. She appeared to recognize her protected position as a black woman in an era of affirmative action and to use that protected position for all it was worth—accellerated (sic) promotions, specially arranged teaching schedules, etc.

My own inclination is to view her interpretation of ten-year old events in light of the impact it will have on her personal interest.

Very truly yours,

DENNIS ALAN OLSON,
Dallas Fort Worth School of Law.

AFFIDAVIT

John L. Burke, Jr., being duly sworn, says:

1. I am the managing partner of the Washington office of the law firm of Foley, Hoag and Eliot. I have been engaged in the private practice of law in Washington, D.C. for 20 years. I live at 1403 McLean Mews Court, McLean, Virginia 22101.

2. From August 1, 1980, until June 15, 1985, I was a partner in the Washington law firm of Wald, Harkrader & Ross. To the best of my recollection, Anita Hill joined that law firm in the fall of 1980.

3. It was the practice of that law firm to evaluate the work performance of its associates approximately every six months, I recall a time, which I believe to be in the late winter or early spring of 1981, when I met with Anita Hill in my office at the law firm to discuss her work performance with her. At that time, I was the partner in charge of coordinating work assignments for the tax, general business and real estate section of that law firm. Anita Hill had performed work assignments for the lawyers practicing in that section, including several assignments for me.

4. To the best of my recollection, that performance evaluation lasted between 30 minutes and one hour. During the course of that performance evaluation, the specific details of which I am unable to reconstruct, I expressed my concerns and those of some of my partners, that her work was not at the level of her peers nor at the level we would expect from a lawyer with her credentials, even considering the fact that she was a first-year associate.

5. During the course of that performance evaluation, I suggested to Anita Hill that it would be in her best interests to consider seeking employment elsewhere because, based on the evaluations, her prospects at the firm were limited. I also discussed with Anita Hill the fact that Wald, Harkrader & Ross was not a firm which treated its lawyers harshly and would assist her, as it would any of its associates, in finding an appropriate legal position and that she should avail herself of that assistance.

6. The performance evaluation meeting was uncomfortable for both Anita Hill and me because I was conveying a very difficult message. Anita Hill discussed with me, and disputed, some of the comments about the quality of her work. Apart from that, there was nothing that I recall to be unusual about her reaction to the evaluation, given the circumstances.

7. It is my personal view that, based on Anita Hill's performance evaluations at Wald, Markrader & Ross, returning to that law firm at the time that Clarence Thomas moved from the Department of Education to the Equal Employment Opportunity Commission was not an available option.

The above statement is given by me voluntarily this 13th day of October, 1991.

JOHN L. BURKE, JR.

Sworn to before me and subscribed in my presence this 13th day of October, 1991.

JUDITH A. HOLLIS,
Notary Public,
District of Columbia.

STATEMENT OF HON. HARRY M. SINGLETON, FORMER ASSISANT SECRETARY OF EDUCATION FOR CIVIL RIGHTS SUBMITTED TO THE U.S. SENATE COMMITTEE ON THE JUDICIARY IN THE MATTER OF THE CONFIRMATION OF HON. CLARENCE THOMAS AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

I immediately succeeded Judge Clarence Thomas as Assistant Secretary of Education for Civil Rights. I was brought on in the capacity of a Deputy Assistant Secretary in the Office for Civil Rights (OCR) as a means of transition to the position of Acting Assistant Secretary pending my confirmation as Assistant Secretary. During that transition period, Judge Thomas and I overlapped at OCR for approximately 4–6 weeks before his departure for the Equal Employment Opportunity Commission (EEOC). During the period of time, I met Ms. Anita Hill who was serving as an Attorney Advisor to the Assistant Secretary (Judge Thomas) and had an opportunity to observe her and her interaction with Judge Thomas. I worked closely with Judge Thomas during this period. At no time did I observe any conduct on his part remotely resembling that which has been alleged by Ms. Hill nor did I observe any behavior on her part which would have suggested that she was having problems with him, in general, or that she felt intimidated by him, in particular, as one might suspect of someone who was being sexually harassed.

More important, however, and the point upon which I specifically want to comment, is the statement made by Ms. Hill on numerous occasions that she followed Judge Thomas to the EEOC because she would have been without a job had she not done so. In fact, during a recent appearance on the Today Show program she stated, according to the transcript from that program, "[I] didn't have the option of staying at Education, so it would have meant that I would have had no job." I submit that this is not an accurate statement.

As I recall, Ms. Hill was a Schedule A attorney. As such, she had career rights. If Ms. Hill was being harassed by Judge Thomas and did not feel comfortable continuing to work with him, she could have remained at OCR. Had she approached me, and she did not, to request that she remain at OCR, she certainly would have been accommodated. In fact, I was prepared to retain her as one of my attorney advisors, but it was always made very clear that she was going on to EEOC with Judge Thomas.

HARRY M. SINGLETON.

OCTOBER 10, 1991.

ELIZABETH BRODIE, M.D., PSYCHIATRY,
Houston, TX, October 13, 1991.
Senator JOSEPH R. BIDEN, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: I have been following Judge Clarence Thomas's confirmation hearings with deep interest and concern. During the last few days, it has been painful to watch the agony of Judge Thomas and of everybody on the committee.

I am a psychiatrist, with 28 years of experience in private practice, specializing in personality and behavior problems. I would like to provide some insight into how Professor Anita Hill could be saying what she believes is true and at the same time be presenting a situation which in fact did not occur. Such insight would also lend support to the view that her testimony may not have been politically or ideologically motivated.

The insight I offer is based on the following: fragments I learned about Professor Hill's background, the testimonies concerning her behavioral reactions at work, and my careful observation of her during her testimony.

As members of the committee had the opportunity to observe, Judge Thomas is a person who is obviously well aware of his feelings and expresses them in a clear, mature, and honest way. On the other hand, Professor Hill appears impassive, sounds monotonous, and displays very little obvious feeling. When questioned about her feelings both in the past and in the present regarding her alleged harassment, she responded repetitively only that she felt embarrassed and uncomfortable. At one point she showed a sign of emotion when, attempting to answer what was, to her, a difficult question, she broke out sweating in her face. In addition, it was mentioned that, during the time of the alleged harassment, she had to be admitted to hospital for three weeks because of "stress." This piece of information was not followed up on. A person who is emotionally not well aware and for different serious reasons had to repress strong feelings, can easily develop what is called a "conversion reaction," which makes a person believe that certain emotionally loaded experiences occurred, whereas there may be no realistic foundation for them at all.

Many times in the hearings the question of lying and fantasizing came up with regard to Professor Hill. Fantasizing and lying are activities requiring conscious decision, whereas the conversion process I am referring to is an unconscious process which occurs in the brain and the person experiencing it is unable to recognize that an altered perception has occurred. Therefore, Professor Hill cannot be blamed with either fantasizing or lying, but with presenting a situation which, in her belief, actually happened. The source of the stress which she experienced could thus have come entirely from within her, regardless of her actual relationship with Judge Thomas.

This does not mean that on a professional basis she could not impress people who know her as a "strong person" or that she would not be "forthright and independent" in her apparent behavior.

Concerning the polygraph test she took, I do not wish to comment scientifically on the validity of this examination, but want to point out that unconscious repression of feelings applies to most circumstances in life, including a polygraph test, which does not record anxiety when it is not felt because the person tested has the conviction that she is right.

I would also like to point out that a number of committee members handled questioning Professor Hill with kid gloves, obviously motivated by the fear of some people's reactions. This has helped Professor Hill maintain her composure and to feel fully affirmed.

I do not have doubts concerning the honesty and integrity of Judge Thomas and hope that he will not allow this unfortunate incident to destroy his belief in humanity, but rather increase his understanding of the complexity of human nature, feelings, and behavior.

Sincerely,

ELIZABETH BRODIE, M.D.

PURDUE UNIVERSITY,
October 10, 1991.

STATEMENT OF DR. FLOYD W. HAYES III

My name is Floyd W. Hayes III, and I am an Associate Professor in the Department of Political Science and the African American Studies and Research Center at Purdue University. I am pleased to make a statement on behalf of Judge Clarence Thomas, who has been nominated by President Bush to become an Associate Justice of the United States Supreme Court. From March 1985 to July 1986, I worked as a special assistant to Judge Clarence Thomas when he was the Chairman of the United States Equal Employment Opportunity Commission.

Based on my experience at the Commission, which included attendance at some staff meetings. I viewed Mr. Thomas as an intelligent and effective administrator. He is a sensitive and kind person. Moreover, I can say unequivocally that Mr. Thomas's demeanor toward staff members was at all times professional and courteous. As to his relations with female employees, I assert that Mr. Thomas was always professional and respectful. To my knowledge and recollection, he never behaved in a dishonorable manner toward female employees. During my tenure at the Commission, I never heard any remarks or rumors about Mr. Thomas that even suggested poor conduct toward women. Moreover, in limited personal conversations with him, I never got the impression that he viewed women negatively. Therefore, I am appalled at the recent charge against him. In my judgment, he is a man of distinguished character. I have great respect for Mr. Thomas and his achievements.

On or about Monday, September 23, 1991, I received a telephone call from a man who represented himself as Senator Howard Metzenbaum's Counsel. What bothered me enormously was that he seemed to be interested in finding something negative about Mr. Thomas. Soon after he introduced himself, he asked if I knew of any relationship between Mr. Thomas and Mr. Jay Parker of the Lincoln Institute. He asked a few additional questions on this subject. After I told him that I had no knowledge of this relationship and related matters, Senator Metzenbaum's Council terminated the conversation. I felt very strongly then that the call had been part of an effort to discredit Mr. Thomas. In view of recent events as reported by the news media, I am persuaded that there is a concerted effort to dislodge Mr. Thomas's nomination by assassinating his character. In the process, his family is being humiliated. I want to urge in the strongest way that this matter be investigated.

My sincere hope and expectation is that Mr. Thomas will be cleared of the charges made against him and that he will be confirmed as the next Associate Justice of the United States Supreme Court. Clearly, the situation is a difficult one. Nevertheless, look for justice to prevail and continue to support Judge Thomas's nomination. If confirmed, he will be a great Supreme Court Justice.

FLOYD W. HAYES III, PH.D.

ROGER L. TUTTLE LAW OFFICES,
Richmond, VA, October 8, 1991.
Mr. PETER LIEBORD,
Staff Counsel, Senator Danforth's Office, U.S. Senate, Washington, DC.

To Whom It May Concern: I was a member of the Faculty Recruitment Committee when Anita Hill was first brought to the attention of the O.R.U. Law School. Because of her experience as a member of Judge Thomas' staff at EEOC, we looked on her candidacy with favor and ultimately offered her a position on the faculty.

I was subsequently named Dean of the Law School, and in that capacity I supervised Ms. Hill's work. During this period of time in which I was associated with her she had nothing but the most laudatory comments about Judge Thomas as a fine man and an excellent legal scholar.

During the three years I knew Anita Hill she never made a single derogatory comment about Judge Thomas but always praised him highly. I am now flabbergasted that she would make the allegations she had.

ROGER L. TUTTLE.

I worked for the Office for Civil Rights in the Education Department from the inception of the Department in May, 1980 through September, 1986. I was placed in the position of Executive Assistant to the Assistant Secretary for Civil Rights by Cynthia Brown, President Carter's appointee as first Assistant Secretary for Civil Rights. After Ms. Brown's resignation in January 1981, I worked for the Acting Assistant Secretary for Civil Rights, Frederick Cioffi.

Prior to Clarence Thomas' appointment as Assistant Secretary for Civil Rights, Mr. Cioffi arranged for my reassignment from the Assistant Secretary's immediate staff to the Litigation Division of the Office for Civil Rights. I was completing my law degree in May 1981 at Georgetown University Law Center (evening division) and was interested in working with the legal staff of OCR. I did not wish to remain as Executive Assistant to the Assistant Secretary for a person I did not know because of the personal nature and close working relationship necessary for the position.

When Clarence Thomas was appointed as Assistant Secretary, I was asked by Mr. Cioffi to introduce him to the Office for Civil Rights and its functions. I agreed to work with Mr. Thomas on a transition basis. I considered myself to be apolitical as a civil servant; however, I had no interest in serving as an assistant to a new political appointee.

I met Clarence Thomas in the Spring of 1981 and worked to orient him to the Office for Civil Rights. It was my intention to go to the Litigation Division following the orientation. Mr. Thomas asked me to stay on as his assistant and continue to perform the duties I had under the former Assistant Secretary.

I agreed to work for Mr. Thomas because I felt he was a good person and wanted to help the Office for Civil Rights. I continued as his assistant through his tenure with the Office for Civil Rights. I worked closely with Mr. Thomas on day to day operations of the Office.

When Mr. Thomas hired Anita Hill, I worked with the Department's personnel

staff to effect her appointment. I recall that there was some question about her qualifications for appointment at the requested grade level, but the matter was resolved and I believe she was appointed to an attorney position in the Office for Civil Rights.

Ms. Hill and I had limited interaction in our work, as she worked on policy matters and I worked on management matters. Our offices were contiguous in an area adjacent to the Assistant Secretary's office, and I considered her a work acquaintance. I recall that she went to the EEOC with Mr. Thomas, and later heard that she had decided to leave Washington and had gotten a job as a law professor.

During the time Mr. Thomas was with OCR, I had no reason to believe he would sexually harass any employee. Mr. Thomas appeared to me to be a private person, devoted to his son. His dealings with me were always professional and I grew to respect him for his support of civil rights. I had no reason to believe that any sexual harassment was going on in the office, and observed no tension in his contacts with Ms. Hill nor any indication that they had anything other than a professional relationship.

Mr. Thomas initially asked me to go with him to the EEOC upon his appointment. When his successor was named in OCR, Mr. Thomas asked me to stay in OCR to assist his successor, who was a personal friend of his. I agreed to stay and worked for Mr. Thomas' successor until he left OCR in 1986.

PATRICIA HEALY.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, DC, February 12, 1985.

MS. ANGELA WRIGHT,
Director, Office of Public Affairs, Washington, DC.

DEAR MS. WRIGHT: This is to notify you that your services with the Equal Employment Opportunity Commission are no longer needed. For this reason, your employment will be terminated close of business on March 1, 1985.

Sincerely,

CLARENCE THOMAS,
Chairman.

JANUARY 20, 1984.

Memo For: Kate Semerad.
From: Angela Wright.
Subject: My resignation.

Since your arrival in OPA, the atmosphere in this office has been charged with racial tensions. You have embarked on a course of steadily persecuting the minority members of your staff one by one. I fully realize that this springs both from your own prejudice and your total incompetency to function in your job without the lackey-like adoration of those even less competent than yourself—those who constantly massage your fractured ego. Because of what almost every member of a minority group has had to endure to achieve professional status, they are not easily fooled by your pitiful charade and therefore can not pay the slave-like obeisance you demand as the sole criteria for the performance of a job. It is perhaps because you know how much blacks have to know to get through the door, that they are so threatening to you.

I will not acquiesce to your silliness. You are a fool. I will not demean myself by the servile posture you demand. I do not need to do this I am a skilled and competent professional. You are not, and this is perhaps the reason for your thrust against those more competent, more skilled, and more knowledgeable than you. I will not be your lackey. Therefore, I am tendering my resignation, effective February 3, 1984.

QUESTIONS ON ANGELA WRIGHT

[Note: Ms. Wright was not sworn before giving statement]

1. Ms. Wright, you have alleged that Judge Thomas made some inappropriate comments to you at a banquet in 1984. Although you cannot remember exactly what Judge Thomas said, you allege that he complimented your appearance and predicted you would date him. (13.)

You also state that you did not react to this remark, and that Judge Thomas did not follow up on it (15). Is that correct?

Yesterday, when you were interviewed by Senate staffers, you refused to identify the person you allegedly discussed this incident with. Obviously that makes it difficult for us to investigate your allegations. Are you still unwilling to give us the name of that person? (42.)

2. Let's discuss the time you allege that Judge Thomas visited you at your apartment.

You do not remember precisely when that was? (44.)

You also do not remember what time it was when he arrived? (44–45.)

Can you recall why Judge Thomas allegedly said he was there? Indeed, you told the staffers yesterday that you cannot remember any "specific things" about the conversation? (17.)

You say you don't know how Judge Thomas got your address. You didn't ask him at the time, did you? (43.) You believe it is possible that you yourself told him, isn't that right? (44.)

3. You also stated that Judge Thomas once remarked on the size of your breasts at an EEOC seminar. You told the staffers yesterday that you can't remember what seminar that was, didn't you? (20.) Or where it was? (20.) You can't remember the specific subject of the seminar either, can you? (20.)

4. Ms. Wright, you say that you may have told Phyllis Berry about Judge Thomas' advances towards you in a general way. (22, 24.) You say that she replied: "Well, he's a man, you know, he's always hitting on everybody" (25.)

Are you aware that Ms. Berry has vouched for Judge Thomas' integrity and has defended him against sexual harassment charges? In fact, Ms. Berry has specifically referred to your charges as "totally ludicrous." (Charlotte Observer, 10/11/91, at 13A). Ms. Berry has said: "Nothing like that occurred." (Id.) Do you still believe you complained to Ms. Berry about Judge Thomas?

5. You reported that other women who worked at EEOC allegedly told you that Judge Thomas had asked them to date him (36). Are you aware that 17 women who have worked closely with Judge Thomas have emphatically denied that he did this sort of thing, or that he was the type of person who would or could do this sort of thing? (Washington Post, 10/11/91, at A10).

6. You said during the interview with the Committee's staff that you discussed Judge Thomas' alleged advances towards you with your closest friend at EEOC, but refused to identify that person. (62.) Are you now willing to tell us who that person is?

7. You have stated that you never felt sexually harassed by Judge Thomas, isn't that right? Never felt threatened? Never felt intimidated? (40.)

8. You told the staffers yesterday that you think Clarence Thomas should not be confirmed to the Supreme Court. (53.) But, in your interview with Committee staff, you said that this conclusion was based on certain critical remarks that you say Judge Thomas made about particular EEOC employees. Why would Judge Thomas' expression of criticism of his subordinates disable him from service on the Supreme Court?

You were fired by Judge Thomas, correct?

9. Ms. Wright, do you know Jayne G. Benz? Didn't she serve as a staff assistant for Judge Thomas while you were at EEOC? Didn't she report to you for a period of three months?

Ms. Benz says that she never observed any irregularity between you and Judge Thomas. She says that Judge Thomas fired you solely because of your poor job performance. Do you disagree with that account?

10. Isn't it true that you had received a poor job evaluation when you worked for Judge Thomas at the EEOC? An evaluation that you characterized as a "C" rating? (64.)

R. Gaull Silberman, one of the other commissioners at the EEOC, has said: "I complained about her all the time because I thought she was grossly incompetent." (Charlotte Observer, 10/11/91, at 13A). Do you recall these complaints from Mrs. Silberman?

11. You have stated that you don't believe that Judge Thomas fired you because you had refused his alleged advances, isn't that correct? In fact, you believe that he simply wanted somebody else for the job, isn't that right? (50.)

You have stated that on the day you were dismissed, Judge Thomas criticized you for not wanting to speak to him after work (30). You didn't think that related to Judge Thomas' alleged advances towards you, did you? (30.) Wasn't that comment made, as you later suggest, in the context of your responsibility to report to him (35)?

12. Ms. Wright, you worked for Congressman Charlie Rose from 1976 until 1978, is that correct?

Why did you leave Congressman Rose's staff?

Was there an official explanation for your firing? [Absence without leave from work]

Apart from the official explanation, were there any other reasons that you can think of for your firing?

13. Ms. Wright, you stated many times that you had not sought to make your allegations to the Committee; rather, you were contacted by a staffer, Mark Schwartz. (57.) Did Mr. Schwartz tell you how he had discovered your name? Were you expecting his call?

You say that Mr. Schwartz told you he had heard of a column you had written about Ms. Hill's allegations. You say this column was not going to be published. (57.) Did Mr. Schwartz tell you how he found out about this column? Do you know?

Are you still unwilling to share this column with us or tell us what you wrote? (57–58.)

When did you start thinking about writing this column? Was it before or after Professor Hill's allegations became public?

14. Has anyone claiming to represent Ms. Hill called you?

Have you ever contacted any members of the media with your story?

You stated that your desire "was never to get to this point" and that you thought you could "control" the process so that it would not get to this point. What did you think would happen after you told the Committee your allegations? What would have happened if you could have "controlled" the process? Would Judge Thomas have been forced to withdraw quietly? Would the Committee have quietly voted down his nomination?

STATEMENT OF SANDRA G. BATTLE SUBMITTED TO THE SENATE JUDICIARY COMMITTEE IN THE MATTER OF THE CONFIRMATION OF SUPREME COURT NOMINEE CLARENCE THOMAS

I, Sandra G. Battle, attorney with the Office for Civil Rights, U.S. Department of Education, respectfully submit the following statement.

I have worked at the U.S. Department of Education since its establishment in May 1980. Judge Clarence Thomas was Assistant Secretary between the period June 30, 1981 and May 12, 1982. From October 1980 through March 1983 I was attorney advisor to Michael Middleton, the Principal Deputy Assistant Secretary for Civil Rights. The Office of the Principal Deputy Assistant Secretary reported directly to the Office of the Assistant Secretary for Civil Rights. In the position as attorney advisor to the Deputy Assistant Secretary, I worked directly with Judge Thomas and Professor Anita Hill, who was the Attorney Advisor to the Assistant Secretary, throughout the period of time that both individuals worked at the U.S. Department of Education, Office for Civil Rights.

(1) I communicated regularly with both individuals in a professional capacity.

(2) Based on my personal knowledge, I have no reason to question the integrity or credibility of either Judge Thomas or Professor Anita Hill.

(3) In my presence, Judge Thomas always acted in a professional manner and treated all employees, including Professor Hill, with the utmost respect.

(4) I observed neither conversation nor conduct directed to Professor Hill or any other employee that could be construed as sexually oriented conduct.

(5) I always observed Professor Hill as a very dedicated, serious, and cooperative employee.

(6) In the presence of Judge Thomas, Professor Hill's demeanor was always cordial and strictly professional.

(7) No conversations were ever held in my presence, between Judge Thomas and Professor Hill, that were not directly related to the mission of the Office for Civil Rights.

(8) Based on my observation there was no indication from the manner in which Professor Hill interacted with Judge Thomas, and he with her, that suggested that either one was having any problems working with each other.

(9) Based on my observation of their interactions I have no reason to believe that Professor Hill was being sexually harassed.

SANDRA G. BATTLE.

CHRISTIAN COALITION,
October 7, 1991.

FORMER COLLEAGUE OF ANITA HILL RECALLS HER PRAISE OF THOMAS

A former teaching colleague of Professor Anita F. Hill at Oral Roberts University has a different recollection of her role in inviting Judge Clarence Thomas to speak at a seminar on employment discrimination in 1983–1984.

Dr. Tom Goldman, former Oral Roberts University professor and currently a professor of law at Regent University in Virginia, recalls that Professor Hill offered to contact Judge Thomas and extend the law school's invitation to address students on the subject of employment discrimination in academic year 1983–84. Professor Hill extended the invitation two years after the alleged incidents of sexual harassment.

"I was asked to put together a seminar on employment discrimination," said Professor Goldman. "In doing that, I arranged for an attorney in California who had written a book on the subject to speak. My recollection is that Professor Hill suggested Judge Thomas as a speaker. She and he appeared to be on a friendly basis while he was on campus. There is no question that she was the means by which we obtained Thomas as a speaker."

The Christian Coalition also released a statement from former Oral Roberts University Law School Dean Charles A. Kothe, who hired Professor Anita Hill to a teaching position on the recommendation of Judge Thomas in the fall of 1983. Kothe corroborated Professor Goldman's recollection of Anita Hill's relationship with Judge Thomas as friendly and professional. "I find the references to the alleged sexual harassment not only unbelievable but preposterous," said Dean Kothe. "I am convinced that such are the product of fantasy."

"We are concerned that Professor Hill's charges, coming so late in the confirmation process, are a last-ditch effort to smear Judge Thomas," said Ralph Reed, executive director of the Christian Coalition. "We question the relevance of Professor Anita Hill's charges given her previous attitude towards him, and the fact that they have been made public at the eleventh hour."

Christian Coalition is a grassroots citizen action organization that has aired nationwide television spots in support of Clarence Thomas. Its members have generated an estimated 100,000 petitions, letters, and phone calls to the Senate in support of Judge Thomas' confirmation to the Supreme Court.

CONGRESS OF RACIAL EQUALITY,
New York, NY, October 10, 1991.

Mr. CLARENCE THOMAS,
Judge, U.S. Court of Appeals, Washington, DC.

DEAR JUDGE THOMAS: On behalf of the women of the staff of the Congress of Racial Equality (CORE) please accept our continued and unshaken support of you in this most trying moment of your life.

Words cannot express the outrage at this last minute attempt to impugn your character. For Anita Hill to give testimony about alleged sexual harassment on the condition that you not be informed is one of the greatest violations of a fundamental concept of American law: that the accuser must be willing to face the accused. This is totally unacceptable from someone with the background of Ms. Hill's—a tenured law school professor.

For this exploitation of a serious problem in our society—sexual harassment—to be allowed to affect your confirmation, is a total travesty of justice.

The women of this organization, the Congress of Racial Equality (CORE) as well as the majority of level headed woman of all races are behind you 100%.

Do not hesitate to call on us if you need us.

Respectfully,

ANGELIQUE WIMBUSH,
Executive Assistant to the National Chairman.

Washington, DC, October 13, 1991.

Members of the Senate Judiciary Committee, *U.S. Senate, Washington, DC.*

DEAR SENATORS: I worked as a Special Assistant to Clarence Thomas at the EEOC from 1985 to 1986. I am writing because I am amazed and outraged at the "fatherly ambience" that he is getting away with projecting as an image of his office. Let me make it clear: I am not claiming that I was the victim of sexual harassment.

Clarence Thomas pretends that his only behavior toward those who worked as his special assistants was as a father to children, and a mentor to proteges. That simply isn't true. If you were young, black, female and reasonably attractive, you knew full well you were being inspected and auditioned as a female. You knew when you were in favor because you were always at his beck and call, being summoned constantly, tracked down wherever you were in the agency and given special deference by others because of his interest. And you knew when you had ceased to be an object of sexual interest—because you were barred from entering his office and treated as an outcast, or worse, a leper with whom contact was taboo. For my own part, I found his attention unpleasant, sought a transfer, was told one "just doesn't do that," insisted nonetheless and paid the price as an outcast for the remainder of my employment at EEOC.

I can understand why some of his special assistants are coming forward to his defense: he is the most powerful black man they know and possibly, the most influential they will ever know. They want to retain contact because they will need it to survive and to advance in a very tough world. But the atmosphere of absolute sterile propriety permeated by loving, nurturing but asexual concern is simply a lie. Women know when there are sexual dimensions to the attention they are receiving. And there was never any doubt about that dimension in Clarence Thomas' office. I have told all of this to Senate staff including the Chairman's staff in the weeks following the nomination. But in light of the importance which both ambience (in his office) and credibility have now assumed in these hearings, I felt obliged to communicate this in writing in order to put this on the record publicly.

Sincerely,

SUKARI HARDNETT.

My name is Diane Holt. I worked as Clarence Thomas' Secretary from May 1981 to September 1987.

I learned today that Sukari Hardnett is saying that if you were young and attractive you felt under scrutiny in Clarence Thomas' office. Nothing could be further from the truth.

Ms. Hardnett came to work at EEOC in 1985 as a legal intern. Legal interns are hired while in law school to give them an opportunity to gain practical experience. Once out of law school, these interns are given an opportunity to pass the Bar whereupon they are converted to "attorneys." If the individual does not pass the Bar, the appointment expires. Ms. Hardnett did not pass the Bar and was dismissed, in 1987.

Ms. Hardnett occupied a small back office with several other women. At no time did I discern from Ms. Hardnett or any of these other women that Ms. Hardnett felt under sexual scrutiny, felt uncomfortable or was in fact seeking other employment.

Furthermore, in the 6 years I worked directly for Clarence Thomas, there were many, many, very attractive women in his employ, who I'm sure would testify that they were not made uncomfortable by being or feeling under scrutiny.

DIANE HOLT.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, October 10, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: I have been the Managing Director of the Federal Communications Commission for the past two years. I

had been Management Director of the Office for Civil Rights in the Department of Education with direct responsibility for personnel and EEO during the time Mr. Clarence Thomas was Assistant Secretary. I was also Financial and Resources Management Director of EEOC while Mr. Thomas was Chairman. In these capacities, I also knew and worked with Ms. Anita Hill.

I differ with Ms. Hill's statement that she followed Mr. Thomas to EEOC because she would have lost her job at OCR. At no time were any of the employees of OCR at risk of losing their jobs during this period. OCR had a separate budget earmark which was more than sufficient to avoid any staff cutbacks. Additionally, no employees were made to feel that their jobs were in jeopardy by Mr. Thomas' departure from OCR. Quite the opposite was true: after Mr. Thomas announced his departure from OCR to go to EEOC, Mr. Thomas made a special point of walking the halls of OCR to introduce Mr. Harry Singleton, his successor, to OCR staff in order to facilitate the continuity of leadership.

Any explanation of Ms. Hill's rationale for leaving OCR to go to EEOC that is founded on her allegation that she would have lost her job at OCR is without basis. Indeed, Ms. Hill told me at the time that she was flattered to be selected by Mr. Thomas to work at EEOC. In our conversation, she also expressed her admiration for Mr. Thomas.

After I moved to EEOC to be Financial and Resource Management Director, Ms. Hill again praised Mr. Thomas to me. In several conversations that were held, she expressed both her respect for him as a man and as a leader of the EEOC.

In fact, Ms. Hill and I also talked after she announced her own departure from EEOC to become a law professor. She told me that she was indebted to Clarence Thomas for the opportunities he had given her and that he had always been supportive and encouraging of her career goals.

I would also like to express that as a career civil servant in the Senior Executive Service, I can state unequivocally that Mr. Thomas repeatedly, consistently and forcefully impressed upon his senior staff our own responsibilities to act in a professional manner in which would bring credit and respect to the offices we held. In particular, he was vocally adamant that the presence of any form of discrimination—and he specifically mentioned sexual harassment—would not be tolerated. At no time during the nearly nine years I worked in organizations headed by him was there ever so much as a "hallway rumor" regarding his own conduct. He was widely viewed as the epitome of a moral and upright man by the staff he supervised.

I would like to add a personal note. I hold a doctorate from Columbia University and have authored articles and two books on sex equity issues, which I believe help to make me sensitive to the issues of sex discrimination and sexual harassment. I am also the husband of a professional woman who found she had no option but to formally charge her Ph.D. advisor of sexual harassment nearly two decades ago. I believe I am as sensitive to the issue of sexual harassment as any man can be. And I will tell you that nothing in Mr. Clarence Thomas' professional or personal demeanor, and nothing in any of my conversations with Ms. Anita Hill, have ever lead me to believe that Mr. Thomas could act in any of the ways in which Ms. Hill has charged.

If I can provide any additional information in regard to Mr. Thomas' performance or conduct at either OCR or EEOC, please let me know.

Sincerely yours,

ANDREW S. FISHEL,
Managing Director.

FACTS ABOUT ANGELA WRIGHT

Judge Thomas has testfied that he summarily dismissed Ms. Wright because she referred to a male member of his staff as a "faggot" [The Washington Post A22 (10/13/91).]

Rikki Silberman, a Commissioner at the EEOC recalls Ms. Wright's job performance as being "poor." Commissioner Silberman recalls, "I complained about her all the time because I thought she was 'grossly incompetent.'" [Quoted in Associated Press, 10/11/91, AM cycle].

Thelma Duggin recalls Ms. Wright as having been fired "because [she] had not made proper preparations for a meeting that was to be attended by various Commissioners." [Duggin FBI Interview, 10/11/91, at 2.]

Prior to her dismissal, Ms. Wright received a poor evaluation for her job performance. Ms. Wright has stated that she "wasn't satisfied" with the evaluation and that she thought that she "deserved a better evaluation." [Tr., Hill Interview, October 10, 1991, at 64.]

Ms. Wright was fired from her job with Rep. Charlie Rose (D–N.C.) in 1978. "I got fired because I got angry and walked off the job," said Ms. Wright. [Quoted in Associated Press, 10/11/91, AM cycle.]

Ms. Wright is "high strung" and "would react without thinking." [Duggin FBI Interview, 10/11/91, at 1.]

Ms. Wright is "a little shaky on the integrity side." [Id.]

Ms. Wright "always complained about her supervisors and had a problem working within a structure and keeping a job." [Id. at 2.]

Ms. Wright "could be described as a 'seductive-type person' * * * who likes to party. * * * Wright would invite sexual advances of a man and then brag about guys hitting on her. * * * Wright enjoyed the attention of men." [Id.]

Ms. Duggin recalls that Ms. Wright stated, referring to Judge Thomas, "'I want to get him back,'" and "also said she 'was pissed that she had fired her,'" [Id.] and that she stated "'she didn't know if she was going to write anything about Thomas but she was looking for a way to get him back.'" [Id. at 3.]

When Kate Semerad began working for the Agency for International Development (AID) in 1983, "she received reports from coworkers that Wright was delinquent in the performance of her job. * * * Wright was having problems with adequately performing her job responsibilities. * * * [Semerad] confronted Wright concerning major problem areas that needed to be improved: (a) Wright's confrontational attitude; (b) Wright's job skills especially in the area of writing and (c) showing up to work on time." [Semerad FBI Interview, 10/11/91, at 1.]

According to Semerad, she received information from Ms. Wright's immediate supervisor that "Wright's management and writing skills were not satisfactory." She received additional information that "Wright was not putting in a full day's work * * * [in that] she would leave work early and take long lunch hours." [Id.]

Semerad "advised Wright that she would have to fire her if her job performance did not improve. * * * [B]efore she could fire Wright she received a letter of resignation from Wright claiming race discrimination on the part of Semerad. * * * [I]f Wright had not resigned she would have been left no choice but to fire her." [Id. at 2.]

Ms. Wright herself has stated that this letter characterized Ms. Semerad as, in her own words, "unfair and racist and insecure and lots of other things." [Tr., Hill Interview, October 10, 1991, at 67.]

Ms. Wright was "overly sensitive about being a young, attractive black woman * * * [and] felt she was not being treated fairly and people were judging her on her appearance instead of her accomplishments." [Semerad FBI Interview, 10/11/91, at 2.]

Ms. Wright's personality is "vengeful, angry, and immature. * * * [Wright] took her letter of resignation claiming unfounded racial discrimination claims to Capitol Hill seeking revenge on Semerad." [Id.]

[Many of Semerad's comments are repeated in a letter from her to Sen. Thurmond, dated October 10, 1991.]

STATEMENT OF CATHERINE D. BLACKNALL

I, Catherine D. Blacknall worked in the Office of the Chairman, at the Equal Employment Opportunity Commission, as a Secretary to the Assistants from May 1983 to September, 1984, at which time I left to attend the Legal Assistant Program at Georgetown University. Chairman Thomas highly encouraged and supported me in my endeavor because he is a strong advocate for education and advancement for individuals in general.

I worked closely with Ms. Hill prior to her leaving the Office to take a position at Oral Roberts University the Summer of 1983. During the time I worked with Ms. Hill, I have never witnessed any hostility or tension between her and Chairman Thomas. Their working relationship appeared to be very professional.

Judge Thomas has never approached me nor have I heard of him approaching any other females within the Agency in a disrespectful or unprofessional manner. Judge Clarence Thomas has always been a gentleman and man of integrity from whom I respect and have high regards for.

CATHERINE D. BLACKNALL.

OCTOBER 10, 1991.

AFFIDAVIT OF BARBARA PARRIS LAWRENCE

I have been employed by the U.S. Equal Employment Opportunity Commission since August 1982. I was hired by Clarence Thomas and worked on his personal staff from August 1982 through November 1988 when I was reassigned at my request to Personnel Management Services. In August 1989 I became Director of the Planning and Evaluation Division of the Commission's Office of Equal Employment Opportunity.

I was initially hired by Judge Thomas as his administrative assistant and two years later my responsibilities expanded to include disability issues and policy/coordination with the Executive Secretariat.

Clarence Thomas was totally professional and treated me both as an individual and as a woman with the utmost respect and dignity. I worked with him on a range of matters from sensitive policy issues, personnel matters, to administrative activities including budget and finance for the Chairman's Office. On all occasions Judge Thomas treated individuals and policies affecting individuals, including all women's rights, with the utmost respect and sensitivity.

Anita Hill was an attorney advisor (special assistant) on Judge Thomas' personal staff when I joined the staff in August 1982. Because the Chairman's personal staff was pri-

marily situated within one large suite, I had numerous occasions to work with and observe the interaction between Judge Thomas and Anita Hill. At no time did I observe any improper behavior or hear any suggestive remarks. Judge Thomas created a professional and enjoyable work environment. His hearty laughter, sense of humor and smile established a friendly place of work. However, that atmosphere could never possibly be construed as unprofessional. Clarence Thomas treated Ms. Hill with the same professionalism, respect and dignity that he has for all employees and individuals.

Since I regard Judge Thomas to be of the highest character and integrity, I find the allegations of sexual harassment by Anita Hill to be totally preposterous.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC, May 31, 1983.

Dean CHARLES A. KOTHE,
O.W. Coburn School of Law, Oral Roberts University, Tulsa, OK.

DEAR DEAN KOTHE: It is my pleasure to write this letter of recommendation for Anita Hill. Miss Hill has been in my employ for approximately two years. During this period, I have had an opportunity to know her work quite well first as my attorney advisor at the Department of Education where I was Assistant Secretary for Civil Rights and currently as my special assistant. When I first interviewed her for the position at the Department of Education, I recognized in her a sincere interest in civil rights and civil rights enforcement. She has maintained that interest and has combined with it the work needed to put many of our ideas in place.

Overall her work product during the past two years has been of high quality. Moreover, the improvement in her work during this period has been exceptional. These comments apply to both her written and analytical skills. Over the course of the past two years, she has written as many as 75 memorandum, articles, speeches and analytical and working papers for my review. The end product is always clear, thorough and useful. Miss Hill's analytical skills have sharpened such that she is now able to focus on the legal problems which confront this agency and fashion solutions to those problems which are legally sufficient and which promote the mission of the Commission. While we have disagreed on the positions to be taken in particular matters, she is able to support her positions and we are able to resolve the disagreements professionally.

I believe that Miss Hill would be a worthwhile addition to your teaching staff. While I would miss her contributions here, I recognize this as a fine professional opportunity for her and encourage her to explore it.

Should you need more information, I would be happy to discuss Miss Hill's work in greater detail.

Sincerely,

CLARENCE THOMAS.

STATEMENT BY JAY F. MORRIS, FORMER DEPUTY ADMINISTRATOR, AID

SUBJECT: ANGELA WRIGHT/EMPLOYMENT HISTORY

This statement is available for public use and attribution. I am willing to be interviewed under oath by any Senate Judiciary Committee member or staff as well as any agent of the FBI if it is deemed necessary.

EMPLOYMENT HISTORY

In the early 1980's as both originally Assistant Administrator for External Affairs and from mid-1982 on as Deputy Administrator for AID I was responsible for all final approvals on the hiring and firing of political appointees below the Presidential level. As I recall, after I became Deputy Administrator and Mrs. Roger Semerad (Kate) became acting head of the Office of External Affairs, it was suggested that we hire Angela Wright as a press officer in our press affairs division. The person making the recommendation was Kate Semerad. I concurred.

A number of months later, perhaps as long as a year to year and a half, Mrs. Semerad came to me and said Ms. Wright's performance was abysmal. She often failed to come to work or came in late. She was difficult to work with in the opinion of her peers and supervisors. Moreover, her work was unprofessional—that is, late, incomplete, and ungrammatical. Her immediate supervisor, Raisa Scriabine, fully endorsed this conclusion. Based on their advice and my own observations I agreed that she should be dismissed and issued the appropriate order.

POST EMPLOYMENT BEHAVIOR

Subsequent to Ms. Wright's dismissal, Mrs. Semerad was nominated by President Reagan to the post of Assistant Administrator for External Affairs. Upon her departure, Ms. Wright had written a letter to AID accusing Mrs. Semerad of racism and incompetence and threatening retaliation. The accusations were ridiculous on their face. Mrs. Semerad is one of the most fair minded people I know. She is also one of the most competent public affairs specialists I have ever met.

I did not pay any attention to the venomous and threatening tone of the note until after Mrs. Semerad had been nominated by the President. Subsequent to her hearing and favorable recommendation to the Senate by the Senate Foreign Relations Committee, however, a "hold" was put on the confirmation floor vote by a member of the Committee. I learned it was due to a staff member who had received charges of racism levelled against Mrs. Semerad by a former employee. That former employee was Ms. Angela Wright.

This staff member wanted to use office space at AID to call in employees and interrogate them. I refused on the grounds that it would be prejudicial and intimidating. I did agree, however, to provide the names and phone numbers of the remainder of Mrs. Semerad's staff so that he might question them by phone or other means if he so chose. After several days and nights of fruitless inquiry the Senator in question released his "hold" and Mrs. Semerad was confirmed, unanimously if I remember correctly. Ironically, the vote took place in a late evening in October at the very moment I was in my office in the State Department still trying to persuade the staff member in question that he was on a witch hunt.

The reason I am offering this statement is that I am struck by the startling parallels between what Ms. Wright did then and what she is doing now. She vowed vengeance on a former supervisor for dismissal on the basis of incompetence. She seemed incapable of accepting responsibility for her own shortcomings and blamed the episode on external factors. She delayed in making her charges until after the confirmation hearings were concluded. When she made her charges she did so at the 11th hour to a staff member who would be sympathetic because he was "looking for dirt." The entire process suggested a last ditch attempt to stop the advancement of someone she resented. I see the same pattern of behavior today in the case of Judge Thomas.

Respectfully submitted,

JAY F. MORRIS.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC, February 12, 1985.

Ms. ANGELA WRIGHT,
Director, Office of Public Affairs, 2401 E Street, N.W., Washington, DC.

DEAR MS. WRIGHT, this is to notify you that your services with the Equal Employment Opportunity Commission are no longer needed. For this reason, your employment will be terminated close of business on March 1, 1985.

Sincerely,

CLARENCE THOMAS,
Chairman.

JANUARY 20, 1984.

Memo for: Kate Semerad.
From: Angela Wright.
Subject: My resignation.

Since your arrival in OPA, the atmosphere in this office has been charged with racial tensions. You have embarked on a course of steadily persecuting the minority members of your staff one by one. I fully realize that this springs both from your own prejudice and your total incompetency to function in your job without the lackey-like adoration of those even less competent than yourself—those who constantly massage your fractured ego. Because of what almost every member of a minority group has had to endure to achieve professional status, they are not easily fooled by your pitiful charade and therefore can not pay the slave-like obeisance you demand as the sole criteria for the performance of a job. It is perhaps because you know how much blacks have to know to get through the door, that they are so threatening to you.

I will not acquiesce to your silliness. You are a fool. I will not demean myself by the servile posture you demand. I do not need to do this. I am a skilled and competent professional. You are not, and this is perhaps the reason for your thrust against those more competent, more skilled, and more knowledgeable than you. I will not be your lackey. Therefore, I am tendering my resignation, effective February 3, 1984.

The PRESIDING OFFICER. Does the Senator yield additional time?

Mr. THURMOND. Mr. President, I yield 30 seconds.

The PRESIDING OFFICER. An additional 30 seconds.

Mr. SIMPSON. Mr. President, I think it is plain that I and other committee members had a huge body of information and it did come in "over the transom," and a lot of it was signed and sworn to and did not get into the record. Here is some of it. You can chew on it and see what you think about it. It was not invented.

If some in the fourth estate will be comfortable enough to take the paper bags off their heads in their offices today, perhaps they can read the CONGRESSIONAL RECORD at this point and print some sensible comment about it all.

During the 3 days of the committee hearing on sex harassment charges against Judge Thomas, we heard hours of testimony from more than 20 witnesses.

However, the testimony—whether in support of Judge Thomas or in support of Professor Hill—was uncorroborated. No one was actually a witness to the statements that Judge Thomas was alleged to have made. There were no eyewitnesses for either Thomas or Hill on related statements, either, except for one instance.

In that one instance, two persons were present together when Professor Hill made a very important remark. Two fine lawyers, not practicing together—Stanley Grayson, a partner in a New York law firm, and Carlton Stewart, a partner in an Atlanta law firm—were both present when Professor Hill walked up to them at the American Bar Association Conference this past summer. Now remember that was in August this year in Atlanta. Mr. Stewart stated that Professor Hill told them, "* * * how great Clarence Thomas' nomination was and how much he deserved it."

Professor Hill and these two senior attorneys then conversed for about 30 minutes, the attorneys testified, discussing the EEOC and Judge Thomas and other matters. During that time, Professor Hill mentioned nothing negative whatsoever concerning Judge Thomas.

Mr. President, many allegations and statements have been made in this case—but few have been verified by eyewitnesses. Here is a rare instance where verification is available and it is reliable: Just a few weeks ago Professor Hill was speaking with clear enthusiasm about the nomination of Judge Thomas. Strange behavior indeed.

RESULT OF HEARINGS

The Senate Judiciary Committee has conducted the hearings it promised to hold for the full Senate on the allegations of sex harassment lodged against Judge Thomas by Anita Hill.

America was certainly glued to the proceedings, but the hearings produced what everyone had expected: First, Anita Hill repeated her previous allegations and added much more that she had never before mentioned; and second, Judge Thomas categorically denied he did anything that Hill alleged.

As expected, we observed one person's word against another.

There emerged no fact which substantially answered the initial questions which applied to Professor Hill's allegations: First, why did she wait for 10 years to make the allegations—given that her specialty and expertise was in employment discrimination law? Second, why did she move with him from the Department of Education to the EEOC if he had been sexually harassing her in the outrageous and disgusting manner she alleged; and third, why did she continue to call Judge Thomas and see him after she left his employ?

I believe there was a very good thing that emerged from these hearings: Judge Thomas told the world with passion, anger, and accuracy about the cynical manipulation of the nomination process by the liberal special interest groups.

Judge Thomas told us how he was being lynched for being an uppity black man who dared to defy liberal ideology and think independently.

Judge Thomas gave a personally powerful and utterly convincing denial of any improper behavior on his part. I am pleased the American public had the opportunity to hear and see all of this, I am woefully sorry that Judge Thomas and his dear wife Ginny had to endure and suffer so much personal pain and anguish before sharing the truth in such a moving way with all Americans.

TESTIMONY OF ANITA HILL

Professor Hill certainly gave the appearance of being sincere, honest, and truthfull.

She is an intelligent, articulate, and poised woman.

She herself—like Judge Thomas—has come over a long trail from a disadvantaged rural background to impressive career achievements.

However, after having spent nearly 7 hours listening to her testimony, and comparing that testimony to her earlier statements, I conclude that Professor Hill has not been forthcoming to this committee.

Her initial statement to the committee and the FBI did not contain hardly any of the lurid and obscene pornographic details that she brought forth on national television during the hearings.

Her initial statement to the FBI was truncated and unspecific even though the two FBI agents urged her to be as specific as possible, and even though one of the agents was female and offered to hear the more sexually explicit details without the presence of the male agent.

Professor Hill's "revised statement" to the committee—made before the hearings began—again did not contain the specific, personal pornographic references she made before the committee—references to "Long Dong Silver" or the comment about the pubic hair in the Coke can, or to Judge Thomas' alleged sexual prowess or physical endowment.

In short, after 18 years of practicing law, my experience leads me to seriously question the allegations presented by Professor Hill.

But let us remember: While I doubt her story, I also sympathize with Anita Hill's public predicament.

As for Judge Thomas, I strongly wish Anita Hill had never had to make these allegations public.

JUDGE THOMAS' TESTIMONY

In addition, Judge Thomas was persuasively firm, adamant and convincing in his denials.

The panel of women coworkers who testified in his favor—J.C. Alvarez, Nancy Fitch, Diane Holt and Phyllis Berry-Myers—made a very strong and telling point: There was no way that Judge Thomas could have done what he did without the rest of the Office finding out about it.

As Senator GRASSLEY put it at the hearings, "once two people know about something in Washington, DC, it is no longer a secret."

If Judge Thomas really did what Anita Hill claimed he did, we would not have the hearsay corroboration of the witness Susan Hoerchner, instead we would have the factual corroboration of women like J.C. Alvarez or Phyllis Berry—women who had longer, continual and closer personal contact with both Thomas and Professor Hill than did Hoerchner or any other of her witnesses.

Judge Thomas gave very compelling testimony that he did not sexually harass Anita Hill or anyone else, and he was properly and convincingly corroborated by those who worked with him on a daily basis.

SEX HARASSMENT

Let no one be allowed to misinterpret my position on this case to be one of hostility, of being uncaring or insensitive or cavalier about the gravely serious problem of sex harassment in the workplace.

I do know sex harassment exists, I do know it is a serious problem, and I assure you that my commitment to seeing it fully punished is second to none.

However, the fact that sex harassment is a serious problem in society does not mean surely then that every allegation of such harassment is accurate or true or fair.

I simply believe that, in this case, Anita Hill's allegations do not make rational sense.

CONCLUSION

Mr. President, I will not even pretend to know Anita Hill's motivation for saying what she said.

I believe it is possible that she truly believes what she has told us, and that she did not volitionally lie.

However, it is not up to the committee to try to discern the motivation of Professor Hill.

As Chairman BIDEN pointed out, the benefit of the doubt in these proceedings must be given to the nominee.

The opponents of Judge Thomas had the significant burden of proof of establishing the truth of allegations.

Judge Thomas has convinced me that he was not guilty of sex harassment, and Professor Hill did not convince me that he did what she alleged.

So here for us is the bottom line: Let us proceed to confirm Judge Thomas, and let us promise to never again air charges such as these in a Senate or public forum.

If allegations arise for future nominees, it is possible and proper for us to investigate them in executive session—at least in a limited manner.

Neither Judge Thomas nor Professor Hill wished these charges to be public.

These past 3 days of hearings have demonstrated two things: Such charges and counter charges should not be discussed—in this type of a process—on nationwide television ever again, and Judge Thomas deserves to be elevated to the Supreme Court. He has earned it over a lifetime, lived in a truly exemplary way.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield 2 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, 2 weeks ago I announced my decision to vote against Clarence Thomas. When he came to the original confirmation hearing he said that he did not have any articulable judicial philosophy; that he was an empty vessel and that he did not have any positions on the major constitutional questions of our time.

Mr. President, as a U.S. Senator I cannot support a nominee who says he or she has no articulable judicial philosophy.

This past week serious allegations have been raised about sexual harassment by Professor Hill—allegations that Clarence Thomas, while chair of EEOC, violated the very rules and regulations he was appointed to enforce. To be fair, Mr. President, it is really impossible to reach a conclusion one way or another, but I wish to remind all of my colleagues that what has happened in the United States of America this past week amounts to a social earthquake.

The sooner we get serious about dealing with questions of sexual harassment and discrimination against women, the better.

It is with a profound sense of sadness, Mr. President, that I wish to point out on the floor of the U.S. Senate that unfortunately what happened to Professor Hill only proves how difficult it is for women to come forward and what happens to them when they do. The bottom line, Mr. President, is that even beyond this confirmation vote, the Congress must deal, must face up to problems of sexual harassment and discrimination against women, and the sooner we do it, the better. I yield the rest of my time.

The PRESIDING OFFICER. Who yields time?

Mr. COHEN addressed the Chair.

Mr. THURMOND. Mr. President, I yield 4 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, the further hearings on Judge Thomas this past weekend have been quite an astonishing spectacle—one I hope our country does not have to endure again anytime soon.

Before Professor Hill's allegations came to light, I had indicated that I would support the confirmation of Judge Clarence Thomas to the Supreme Court. Frankly, that decision was made with some reluctance, given my strong support for a woman's right to choose and affirmative action and civil rights legislation, subjects on which Judge Thomas' views are either noncommittal or nonsupportive. But I was persuaded that Judge Thomas is a gifted person capable of growth and moderation and openmindedness, and I also have considerable faith in the judgment of my friend and colleague Senator DANFORTH, whose strong advocacy of Judge Thomas has impressed us all.

All during this chaotic weekend, I have been wrestling with the charges and countercharges and trying to determine as best I can whether, in my judgment, Judge Thomas continues to merit my support. If the specific charges made by Professor Hill were proven to be true, then that would, in my view, clearly disqualify Judge Thomas from serving on the Supreme Court, and, indeed, threaten his present position to the U.S. Circuit Court of Appeals.

Regardless of the outcome of tonight's vote on Judge Thomas, I believe our society will ultimately be well served by a heightened awareness of the problem of sexual harassment. As the coauthor with Senator JOSEPH BIDEN of the Violence Against Women Act of 1991 and a supporter of Senator DANFORTH's civil rights compromise which expands damages available to women who are victims of sexual harassment or discrimination, I have long been active in efforts to toughen laws addressing the victimization of women. Sexual harassment has always been a firing offense within my office. If men become more sensitive to this issue and women who have been harassed are encouraged to take advantage of the legal recourses available to them, then that may be the one positive aspect of this unsavory episode.

But the Senate is not being asked to rule on the scope of sexual harassment in America today. We are being asked to make a judgment on the completely divergent testimony presented by Judge Thomas and Professor Hill. Both individuals have made impassioned statements, both appear credible, but each leaves no room for ambiguity, nuance, or an explicable interpretation of a possibly misunderstood personal or professional relationship. Accusation and denial are each branded a lie.

The hearings conducted by the Senate Judiciary Committee provided no clear-cut resolution to the fundamental dispute. The central question has been how to resolve the issue of doubt—in favor of Clarence Thomas or against him.

To resolve it in his favor immediately opens one to the charge of callous disregard of an issue of immense importance to the women of this country. To resolve it against him rejects a notion of fundamental fairness that the accuser bears the burden of proof in our society.

In trying to resolve how to tip the scales of judgment in this case, I have done my best to sift through the conflicting testimony in an effort to weigh the probabilities.

If, in fact, Judge Thomas engaged in the lewd and disgusting behavior alleged by Professor Hill, then it would seem to me to more likely indicate a chronic character flaw, not an aberrant episode of obscene behavior. If that is true, it seems improbable that his sexual aggressiveness would not have been displayed toward other women in the work environment and that his behavior would not have been reported or, at the very least, noted by others. But the overwhelming volume of testimony of those who worked closely with Judge Thomas—most of whom were women—was clear and convincing on this issue; he behaved with courtesy, kindness, generosity, and complete professionalism at all times.

Another probability to evaluate concerns Professor Hill's actions. According to the sworn and unrebutted testimony of those who worked closely with Judge Thomas and Professor Hill, there was no evidence of any tension, hostility, or dissonance between the two that might reasonably be expected given the behavior alleged by Professor Hill. To the contrary, the evidence seems clear that she sought and maintained cordial relations with Judge Thomas long after she left Washington. Again, it is possible that she buried Judge Thomas' offensive conduct deep within her soul and chose to maintain a friendly relationship in order to protect and further her professional career.

The proceedings conducted by the Judiciary Committee were said not to be a trial, but of course everyone was on trial before the court of world opinion—accuser, accused, and the Senate as well. It is clear to all that a Senate committee, limited by time, constrained by the number of members, and titled by political allegiances could not effectively resolve the doubts raised by the charge of sexual harassment. Procedural and evidentiary protections provided in a judicial proceeding were inapplicable; sharp and tough cross-examinations before the blazing lights and television cameras were neither feasible nor politically acceptable.

So we are left at the end of the hearings as we were at the time they were reopened—uncertain where the truth lies. Although there clearly is doubt, I intend to resolve that doubt in favor of Judge Thomas.

It has been argued by some, principally by Judge Thomas' opponents, that as long as a shadow of a doubt falls across a Supreme Court nominee's

integrity, that nominee must be rejected. But if we allow doubt itself sown by a single individual to be a reason for rejecting an individual, we have set in motion a process which holds the potential for undermining or destroying any nominee for any public office.

There is one further concern I want to express. Judge Thomas clearly feels that he has been the victim of mob action, and he is angry. It is my fervent hope that he will allow his anger and bitterness to subside and that he will continue to open his mind and heart to the issues of privacy and civil rights and maintain a deep concern for those who are victims of harassment and discrimination in our society. By doing so, he will demonstrate that the positive qualities of grace and charity ascribed to him by his backers exist in sufficient measure to merit his ascendancy to this Nation's highest court.

Mr. President, if the phone calls in my State are any indication, the popular vote for me would be to vote against Judge Thomas. The calls are running heavily against him. So the easy thing and the popular thing for me to do would be to vote "no." History might show it might be the right thing to do. Mr. President, I do not believe it is the fair thing to do under these circumstances. For that reason, I intend to support his nomination.

Mr. President, like his predecessors, President Bush is entitled to nominate individuals to the Court who he believes share his philosophical views. It is my personal opinion that should we reject the President's nominee, the Senate must be convinced that his choice is so lacking in intelligence, personal or professional integrity, or judicial competence that the nominee's confirmation will result in a great disservice to the Court and to the Nation.

This is not to say that the Senate should simply act as a rubber stamp, deferring to the President's wishes on each and every occasion. Indeed, I think the Senate's role in the appointment of Supreme Court Justices is one of its most important and critical functions. In fulfilling its constitutional responsibility and duty of giving advice and consent, I believe the Senate does, in fact, share with the President the responsibility for shaping the quality of the Federal judiciary and thus the quality of justice in our Nation.

In order to meet the responsibility imposed by the Constitution, each one of us has an obligation to very carefully evaluate the qualifications and competence of the individuals who are nominated by the President. A considerable amount of time has been spent reviewing the background of Judge Thomas, his academic credentials as well as his years of public service.

Having carefully reviewed Judge Thomas' qualifications, his writings, and his testimony before the Judiciary Committee, I believe he should be confirmed for a seat on the U.S. Supreme Court. I say this despite the fact that I am confident that Judge Thomas does not share my views on a number of key issues and despite the uncertainty on how Judge Thomas will rule on issues of considerable importance, such as a woman's right to choose to have an abortion.

I must say that I am troubled by Judge Thomas' testimony before the Judiciary Committee that he has no personal view on this issue of abortion, that he has not discussed the issue or the decision of Roe versus Wade. I personally can think of no other decision that has generated as much controversy and ongoing public and private debate during the past decade as Roe versus Wade.

As a strong supporter of a woman's right to choose, I share the concerns of pro-choice individuals and organizations about how Judge Thomas is going to rule on challenges to Roe. But I am also convinced after hearing his testimony, and also talking to people I respect who are strongly in support of his nomination, that Judge Thomas brings no personal agenda to the Court.

I am referring specifically to Senator DANFORTH of Missouri. I do not know of any other individual in this Chamber that I have more personal regard for in terms of the high standards that he demands not only of himself but of the people who work with him.

In large measure I have turned to JACK DANFORTH to tell me about the character of Judge Thomas. He knows him well. He has worked with him. Judge Thomas, in fact, worked with Senator DANFORTH over a long period of time. I think he is in a good position to make a judgment about the character of Judge Thomas, and he has assured me that Judge Thomas has no personal or hidden agenda, and that he will be open minded on the Court.

Therefore, I feel confident that Judge Thomas will meet the responsibility imposed by the Constitution and that he will, in fact, keep a fair and open mind as the abortion issue and other difficult issues come before the Court in the months ahead.

The American Bar Association Standing Committee on the Federal Judiciary concluded that Clarence Thomas "possesses integrity, character, and general reputation of the highest order."

I think he is clearly an intelligent and thoughtful man, an independent thinker, and a competent jurist. He has overcome poverty, segregation, and deep-seated racism in this country—and there is still deep-seated racism in this country—and has achieved a position as a Federal judge, a position of great public trust and respect. I think he is going to bring to the Supreme Court a perspective and range of experience unlike that of any of the current or previous Justices.

Mr. President, I recall reading in Justice Cardoza's book, "The Nature of the Judicial Process," that "In the long run there is no guarantee of justice except for the personality of the judge." That may come as a shock to many people, but I think a truth is revealed in that particular aphorism.

I have looked long and hard at the personality of Judge Thomas and I believe a man of his experience, while not fully developed in terms of his constitutional theories, nonetheless has the capacity for growth, moderation, and flexibility. I believe that he has the same capacity that we have witnessed in Justices such as Hugo Black, Earl Warren, and others, to become a truly outstanding member of the Supreme Court. For that reason, I intend to support his nomination when we have an opportunity to vote.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. I yield 2 minutes to the distinguished Senator from Georgia.

The VICE PRESIDENT. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I believe we must try to lower our voices and to seek understanding if anything good is going to come out of this ordeal.

First, the only clear and unmistakable wrongdoing and injustice in this case is the unauthorized leak of Professor Hill's allegations to the news media. In my opinion, this action overrode the rights of both the accuser and the accused and virtually guaranteed the dispassionate analysis of the charges would be impossible. I will support any steps to get to the bottom of this and all other leaks which have recently plagued the Senate, including the imposition of appropriate penalties on the wrongdoer.

Second, the nomination and confirmation process in this case has been flawed from the outset, and it has been thoroughly political at every step of the way. The failure to give adequate attention to Professor Hill's charges in a timely fashion is only one of the last in a series of failures, in both the executive and the legislative branches, which do no honor to any of us.

Third, unlike some of my colleagues, I found nothing in the testimony to disprove Anita Hill's allegations. I heard from too many women verification that Professor Hill's behavior in this case is entirely consistent with that of a victim of sexual harassment. However, there was nothing to prove the charges either and, therefore, on the central question of the confirmation of Clarence Thomas, the weekend hearings were inconclusive, in my opinion, and will not change my earlier decision to vote for the confirmation of Judge Thomas to the Supreme Court.

Fourth, whatever our votes on Judge Thomas, and whatever the outcome of

the confirmation vote, we owe—we owe—something more to the women of America than to leave it at that.

May I have 2 more minutes?

Mr. BIDEN. I yield another 2 minutes.

The VICE PRESIDENT. The Senator is recognized for an additional 2 minutes.

Mr. FOWLER. Mr. President, we should not and must not send the message that victims of sexual harassment have good reason to fear for their reputations and their livelihoods if ever they come forward to seek redress of their grievances. The most distressing news to come out of the weekend hearings was the inadequacy of our existing systems for dealing with cases of sexual harassment. The lack of confidence that many women feel in these systems should call all American institutions, that includes the U.S. Senate, to reexamine and reform our mechanisms for handling such cases.

We will also have the opportunity in the near future to produce something more than just rhetoric in combating sex discrimination. I would hope that when the Senate takes up Senator DANFORTH's civil rights bill in the near future, we will treat sex discrimination equally with all other forms of discrimination.

Finally, Mr. President, it is my fervent hope that the U.S. Senate and the President of the United States have also learned something from this sordid affair. The continued politicization of the judicial nominating process threatens the very future of our Republic and its democratic institutions whether judicial, executive, or legislative. In order to maintain the integrity of the American judicial system, we must find a way to transcend the purely political battleground upon which Presidents and Senators appear to have become so comfortable.

I thank the Chair.

The VICE PRESIDENT. Who yields time?

Mr. BIDEN. Mr. President, I yield 2 minutes to my friend from Massachusetts, who should be yielded 30 minutes in light of his patience. I am sorry, that is all I have.

The VICE PRESIDENT. The Senator from Massachusetts is recognized for 2 minutes.

Mr. KERRY. Mr. President, I am interested to hear my colleagues talk about the state of the evidence and the doubt. The fact is, in this case, the sum total of all the evidence on behalf of Judge Thomas is his denial, and witnesses who are friends who have offered a stubborn denial that there friend and their candidate for the Supreme Court could have done what he was accused of. But none of their statements, and none of what they saw and reported, directly contradicted the four witnesses, four credible witnesses who, under oath, testified as to what they remember Anita Hill telling them.

The one exception we have to the hearsay rule in cases of sexual transgression is called a fresh complaint, and a fresh complaint was made, Mr. President, I can remember trying rape cases in which people were sent to jail on the basis of the testimony of a victim and corroborating witnesses. People go to jail all across America on testimony such as was presented before the Judiciary Committee.

It may well be that some people cannot draw or do not want to draw a conclusion from it, but you cannot dismiss the weight of Anita Hill's testimony. You cannot dismiss the credibility of her motive or her actions. She did not seek out the FBI. She sought to keep this confidential. She has taken a lie detector test, which is a tool we use in law enforcement all the time. Each and every one of her witnesses came before the Judiciary Committee with independent memory, independent corroboration of the sexual harassment she recounts.

One cannot ignore the reality of how people behave in the case of sexual harassment. Indeed, I believe Anita Hill succumbed to ambition, and there is part of this story that is untold but that does not contradict her claim of what happened.

In the end, Mr. President, we are not called upon here to make a courtroom judgment about whether or not someone should go to jail. That is precisely the point. The standard for the Supreme Court is not whether the nominee can avoid going to jail or be found not guilty of a felony. It is whether the nominee meets the high standards demanded for the Supreme Court of the United States.

I previously have spoken in this Chamber about whether the nominee meets the highest standards. I said I did not believe so. But in the course of this weekend, I believe Judge Thomas confirmed that.

I believe that the judge's insertion of racism into these proceedings was a tragic and dangerous act. I believe his use of the word "lynching" was inflammatory, unscrupulous, and intemperate. The judge himself asked for a delay in the Senate vote so that the charges against him could be considered and the air cleared. Must we ask if that was a false request? A charge of sexual harassment by a black woman against a black man is not a lynching.

Judge Thomas knew that the chairman of the committee and the committee itself received harsh criticism for trying to keep the charge confidential as Professor Hill had insisted. Judge Thomas' efforts to have it both ways, and the callous expediency of his charge, will be felt for a long time to come. Such judgment does not belong on the Supreme Court.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. Mr. President, we are expecting Senator ROBB momentarily and Senator NUNN and Senator DANFORTH.

Mr. BIDEN. Mr. President, how much time does the Senator from Delaware still have?

The VICE PRESIDENT. The Senator from Delaware has 1 minute 46 seconds remaining.

Mr. BIDEN. I thank the Chair very much.

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. How much time do we have?

The VICE PRESIDENT. The Senator from South Carolina has 25 minutes and 30 seconds.

Who yields time?

Mr. SIMPSON. Mr. President, I would yield to myself 30 seconds of the time on this side of the aisle—30 seconds.

The VICE PRESIDENT. The Senator from Wyoming is recognized for 30 seconds.

Mr. SIMPSON. Mr. President, I would place into the RECORD an article from the Boston Globe of July 28, 1991, telling us what would happen in this situation as the groups began to crank up on this particular nomination, a very remarkable relation. And then if I may enter into the RECORD a remarkable column from this morning's New York Times by A.M. Rosenthal, who has a deep affinity for the clarity and the reputation of the New York Times, entitled "Harassment by Press," which is a fascinating document that I think most Americans would be very interested in seeing.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Boston Globe, July 28, 1991]

WHITE HOUSE READYING CAMPAIGN FOR THOMAS

(By Walter V. Robinson)

WASHINGTON.—When some of the country's principal civil rights and civil liberties groups declare their opposition this week to Clarence Thomas, President Bush's Supreme Court nominee, his supporters will not be sitting idly by.

Instead, key members of the US Senate will receive visits from some poor black Georgians who were Thomas' neighbors during his boyhood. They will here to underscore his hardscrabble origins and plead with the senators for their votes to confirm him—with the visit recorded by television news crews and paid for by a conservative lobbying group.

To blunt any impression of strong black opposition to Thomas, his black supporters, including some dissident NAACP members, will counter with expressions of support. And last week, the White House and the Justice Department were preparing point-by-point rebuttals to the case Thomas' opponents will probably offer against his confirmation.

This is no replay of the Robert Bork nomination battle of 1987.

Then, opposition groups successfully brought all the sophistication of modern grass-roots politics and public relations to bear against Bork. President Reagan's White House, so convinced that Bork's intellect and legal scholarship made him a cinch for confirmation, did virtually nothing.

This time, the White House, using many of the techniques that Republicans used to win the presidency in five of the last six elections, is stage-managing a coordinated effort to boost Thomas' stock with the Senate and the public and turn aside attacks on his qualifications from the opposition.

"If this is going to be a political fight, there has to be an effort to defend the nominee that is at least as sophisticated as the effort that is being made to defeat him," said Gary L. Bauer, a White House veteran of the Bork battle who is president of the conservative Family Research Council.

This week, the Alliance for Justice, People for the American Way and the Women's Legal Defense Fund, are expected to announce their opposition to Thomas. The NAACP and the Leadership Conference on Civil Rights may come out as well, with all of the announcements timed to occur before Congress begins its summer recess at the end of the week.

Just in case the opposition gains any momentum from the week's events, an ad hoc group with ties to the White House, the Citizens Committee to Confirm Clarence Thomas, is already raising money from conservatives around the country to pay for pro-Thomas television ads in states whose senators are critical to Thomas' chances.

For the moment, the administration's counteroffensive has left many of Thomas' opponents dispirited.

"The White House has run a pretty successful political campaign—so far," said John Gomperts, the legislative counsel for People for the American Way, a liberal constitutional rights group that is expected to oppose Thomas.

But Gomperts said, "So far, we have been dealing with peripheral issues, like his use of marijuana and the federal tax lien against him. Once the central issues become the order of the day, issues like his commitment to civil rights, the White House will have a much more difficult time."

And while Thomas' opponents said it is obvious that the administration has learned from its mistakes in the Bork battle, so too, they say, have they.

"Learning doesn't just occur on one side," said Harrison Hickman, a Democratic consultant and pollster who was involved in the battle to defeat Bork. "We were a step ahead of the Reagan White House in the Bork fight. We know how we can be even more powerful this time—if that's what is needed. The opposition this time is smarter and swifter too."

The mastermind of the White House effort is Kenneth M. Duberstein, a lobbyist and former chief of staff to President Reagan who performed similar chores during last year's successful battle to win Senate confirmation for Justice David H. Souter.

According to White House and administration officials, Duberstein presides over almost daily strategy sessions involving officials from the White House and the Justice Department. The officials fine-tune the day's strategy. And with an eye toward the days and weeks ahead, they review polling data that has been provided by Robert Teeter, the president's pollster.

"It's very much like a presidential campaign with a message of the day. And it's worked quite well," said one White House official who was involved in the 1988 presidential campaign.

SUPPORTERS LAUNCH COUNTERATTACK

The White House strategists also try to anticipate opposition moves and seek to neutralize them, according to the officials.

Two weeks ago, for instance, the White House received advance word of a Congressional Black Caucus news conference, called to detail its reasons for opposing Thomas. The same day, Thomas made several Capitol Hill courtesy calls. His principal Senate supporter, Sen. John. C. Danforth, a Republican from Missouri, delivered a Senate floor speech on his behalf.

And to underscore a critical part of the White House strategy—to convince the public that black leaders are divided about Thomas—the one dissenting Black Caucus member, Rep. Gary Franks, a Connecticut Republican, held his own news conference to praise Thomas. And another group of black conservatives held a separate press conference to urge Thomas' confirmation.

Administration officials believe that Thomas cannot be defeated without overwhelming black opposition at the grass-roots level—one of the keys to Bork's downfall. Last week, a Gallup Poll suggested that the White House has been having some success, at least so far, in preventing black movement away from Thomas. Among blacks, the poll showed, the nomination was supported by 57 percent, with 18 percent against.

Days before the Black Caucus counterattack, when the morning Washington Post disclosed that Thomas had tried marijuana while still a student, the White House responded immediately, pointing out that he had disclosed the use when he was nominated for the US Appeals Court in 1989 and arranging to have several senators say immediately that the marijuana use was irrelevant.

PEER PRESSURE USED

The White House communications office has even prepared speech inserts praising Thomas that have been given to hundreds of administration officials and state and local Republican officials around the country for use in addresses they deliver to various groups. The office has also helped Thomas' supporters draft op-ed articles that have already appeared in hundreds of newspapers.

One senior administration official who has attended a number of meetings on the issue said Cabinet agencies are constantly reminded about instances in which other officials have praised Thomas in their speeches. "It's peer pressure," she said.

Referring to the overall effort, she added: "It's almost overkill."

What is more, she said, principal officials within the administration have been assigned "liaison" roles with important opinion leaders who are thought to be undecided about Thomas.

One principal target of this lobbying effort has been Benjamin Hooks, president of the NAACP, according to administration officials. With the NAACP's board scheduled to decide this week whether to oppose Thomas, Hooks was described last week as "wavering." According to sources, Hooks told associates that Thomas has some good qualities and that, if he is defeated, Bush will nominate a "white Genghis Khan."

WAR CHEST AMASSED

Bauer, the former White House official, formed the Citizens Committee within a week of Thomas' nomination. While much of its fund-raising will be used to amass a war chest to produce and place television and radio ads, Bauer said it will pay other costs, too. For instance, he said, "we will pay the travel costs to Washington for the humble, low-income folks who are coming up from Clarence Thomas' hometown."

Across the fence, Thomas' opponents have no Duberstein figure. But their activities may be no less coordinated.

So far, with few organizations yet recorded in opposition, much of the anti-Thomas effort has involved guerrilla warfare tactics. The formal opposition and grass-roots organizing and fund-raising have barely begun.

In the meantime, the major civil rights and civil liberties organizations, many of them led by veterans of the Bork battle, are sharing research and coordinating strategy.

"There is a lot of planning about when the various groups will come out in opposition, with a goal of achieving some continuity on message and some momentum," said an official of one of the organizations.

OPPONENTS WITHHOLD INFORMATION

"One thing we learned from the Bork battle is to keep things very quiet, not to announce or telegraph our strategy," said the director of one of the opposition groups. "We are going to be much better organized this time, more disciplined and coordinated. And there will be no leaks to the press about what we plan to do."

The official said, for instance, that opposition groups have been withholding some damaging information about Thomas' record, and will time its release to achieve maximum impact.

The White House effort itself, some think, could become an issue. Like others, Bauer sought to downplay the White House role in the outside lobbying effort, saying it had been overstated. "It shouldn't look like the White House has turned this into a political campaign," he said.

Duberstein, the architect, has been avoiding reporters, and other White House officials said they have been cautioned to downplay the extent of the White House role.

"We do not need articles about the coordinated White House campaign," one White House official, speaking on condition that he not be identified, said last week. "It looks manipulative and does not help. It leaves an impression of Clarence Thomas as a weak sister, someone who needs a campaign to put him over the top."

HARASSMENT BY PRESS

[From the New York Times, Oct. 15, 1991]

(By A. M. Rosenthal)

Every day in the newspapers and every hour on the hour on TV, the American press tells the country that not only the judge and his accuser are on trial in the harassment hearings but also the Senate, the nomination process, all men and the character of American society.

True enough, but missing from the list of defendants on the harassment charge is the institution that is shaking its finger at the nation. The American press itself belongs on that list.

So often and so casually that it hardly even notices anymore, the press now practices a wide variety of harassments—based on sex, politics, occupation, prominence, vendetta or even personal tragedy.

I am not dealing with the coverage of the story. It was the hearings, specifically the bravery of witnesses on both sides in risking attack, even their jobs, by speaking their minds and hearts, that made this column pop out of my own mind and heart.

For years I have thought of speaking plain about harassment by press. I did not because of reluctance to seem self-serving since The New York Times is not often an offender, and because of fear—of again making my family the victim of harassment based on blood or marriage.

But now, liberated by and grateful for the courage of the witnesses in the hearings—to it.

It is sexual harassment to pursue a woman's every step, leeching and leering about her, her clothes, her children, her friends and her personal relations with a husband dead almost 30 years. The press has turned Jacqueline Onassis into a harassed, everlasting profit center for factoficto TV and for newspapers, magazines and book publishers. Three decades now we pursue her because she is the widow of a murdered American—in other words, because she is a woman.

It is sexual harassment to send helicopters snooping above Elizabeth Taylor's wedding. It is sexual harassment to send reporters peering into windows of a woman charging rape, or the windows of a Presidential candidate—or to print whether a person is gay to make an "activist" point.

It is sexual harassment for the slavering "reporters" of those primetime "exposé" shows to invade schools, trying to "interview" teachers about the sex lives of other teachers. I wonder how much they have to pay a reporter to do that; maybe not much at all, maybe they just like that line of work.

I say it is loathsome political and personal harassment for detachments of reporters and camera people to camp outside the house of Judge Clarence Thomas, or anybody else trapped in the news, preventing him, his wife and children from coming and going in the peace that every non-criminal is supposed to enjoy in the name of civic decency.

Is it not loathsome harassment to stick a camera and a mike into a mother's face and ask her how she really feels about the shooting of her child, still lying in a drawer in some hospital morgue?

The harassing garbage pail journalism that once existed on the disreputable fringes, in journalism's red light districts, is now a treasured feature of many papers—the daily "dirt pages" of rumor and scandal.

A slick, respected national monthly—no names because so many publications are harassers—quotes an anonymous source as saying that a New Yorker of achievement comes from the "gutter." That is harassment with a mugger's mask, more degrading to magazine than victim.

The garbage pail publications still exist, of interest only to their victims and their publishers, who use them for social entree and profit. Some owners have become hostages of fear to their own staffs.

But what does count is that so many "mainstream" editors and publishers publicize and glamorize the garbage-sprayers. They give them unearned power by running titteringly admiring stories about them, hiring them as "contributing editors," taking them into their clubs and inviting them to parties. The Mugger Who Came to Dinner.

That sends a clear message to their own staffs—dirt and harassment are where power, money and glamour can be found, so dig.

Spare me the First Amendment lecture. I know harassment by press is within the law. I agree the Constitution is worth the price.

So we have freedom of press. Now all that journalists need is freedom of conscience.

Mr. THURMOND. Mr. President, I ask unanimous consent to place in the RECORD from USA Today a statement by Armstrong Williams.

Also from the Charleston Post and Courier "Senate should confirm Thomas."

Also a petition from the EEOC backing Clarence Thomas.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

[From The Charleston Post and Courier, Oct. 15, 1991]

SENATE SHOULD CONFORM THOMAS

A week ago, as Judge Clarence Thomas' nomination to the U.S. Supreme Court was nearing a vote on the floor of the Senate, at issue was whether he was intellectually and philosophically suited for the high court. All that has changed. When the Senate convenes late today to pass judgment, the question on the minds of most Americans will be whether Judge Thomas is morally fit to sit on *any* court in the United States, much less the nation's highest tribunal.

After five tumultuous days of stunning allegations, marathon hearings before the Senate Judiciary Committee, and impassioned denials by the accused, it all boils down to one question: Who is telling the truth? Is it Judge Thomas, the former head of the Equal Employment Opportunity Commission (EEOC) and a judge on the federal court of appeals? Or is it Anita Hill, a former employee of Judge Thomas' at two separate federal agencies?

There is no question that this has been, as a number of Judiciary Committee members from both sides of the aisle have said, a calamity for Judge Thomas and Miss Hill personally, and the confirmation process in general. It would not have come to this had not someone with access to committee documents leaked Miss Hill's confidential statement to the FBI claiming sexually explicit remarks by Judge Thomas 10 years ago. The leak was certainly unethical and likely illegal, and Sen. JOSEPH BIDEN, D-Del., the committee chairman, has vowed to find the source and deal with the person or persons responsible. He must keep that promise.

Meanwhile, some have sought to use the uproar caused by the nature of the allegations to transform the hearings into a referendum on sexual harassment in the workplace. Senators have a duty to resist such egregious tactics. The behavior that Miss Hill alleges is not only inappropriate in the workplace, it is unlawful. Federal statutes enacted in 1986 provide for redress.

Nevertheless, it raises the question of whether Judge Thomas is the kind of man who would engage in lewd and suggestive language. Nothing in the scrutiny of his professional and personal lives during the 102 days between his nomination and last Tuesday's scheduled vote, including a particularly gruelling inquiry by Democratic members of the Judiciary Committee, suggested anything of the kind. It was only at the eleventh hour that Miss Hill's statement to the FBI was leaked.

To support the claim, four persons appeared before the committee on Sunday in attempt to corroborate Miss Hill's allegations. Their testimony was less than compelling. At the most, they could say only that Miss Hill seemed disturbed at times, told them she was being sexually harassed, but offered no real details. Surprisingly, for conversations purportedly involving friends, no advice was sought and none was offered.

More persuasive in Judge Thomas' defense was an EEOC telephone log proving that Miss Hill called him a minimum of 11 times after leaving his employ. His secretary further testified that the log represented only those calls that Judge Thomas did not take immediately, including one wishing him well in his new marriage.

Equally persuasive—or damming, depending on one's vantage—was Miss Hill's decision to follow Judge Thomas from the Department of Education to the EEOC. This could not be considered a reasonable decision if one were truly a victim of grossly inappropriate behavior. And, further, there were the occasions when Miss Hill voluntarily put herself in Judge Thomas' company following her departure from government work, including driving him to the airport in Tulsa, Okla.

Even though the rules of evidence didn't apply in these unprecedented proceedings, to his credit Sen. Biden drew the line on the admission of a last-minute polygraph test. The operator concluded Miss Hill was telling the truth. Polygraph tests are not admissible in the courtroom because of their unreliability nor routinely used in the workplace. The polygraph cannot detect with any degree of certainty the clever or deluded liar or the nervous innocent.

That takes us back to the initial question of whom to believe. The charges are so sensational, and the denial so emphatic, that the only conclusion is that one of the parties is an outrageous liar.

It's important to remember that Judge Thomas is the nominee, not Miss Hill. Has he been proved so horribly flawed beyond any reasonable doubt?

Clearly, he has not. There are too many unanswered questions about Miss Hill's memory, about the charges that seem to have become more expansive and more precise as time elapsed, about the unsupported accusations that Judge Thomas was a martinet, insensitive to the problems of minorities. The list is long and the evidence is short.

Sen Biden observed throughout the hearings that in the absence of compelling evidence to the contrary, the benefit of the doubt *must* go to Judge Thomas. The Senate should vote to confirm.

[From the USA Today, Oct. 15, 1991]

ANSWER SHOULD BE "YES"

(By Armstrong Williams)

Opposing View: The nominee is eminently qualified and a person of outstanding character and integrity.

Judge Clarence Thomas has been subjected to the longest and most savage confirmation proceeding in history. Nevertheless, his qualifications and good name have stood up under the most scurrilous attacks to which any nominee for the Supreme Court has been subjected.

From the beginning, it was clear that ideology was the basis for the onslaught on Thomas. Because the Supreme Court now has a conservative majority, liberal interest groups were determined that not one additional conservative appointment would be made.

Since Thomas' opponents could not kill his nomination on the issues, they attacked him on character.

However, three panels of witnesses testified that Thomas is a decent person of integrity who showed kindness, sensitivity and caring for all his employees.

Despite his ordeal, Thomas found a positive outcome. He said he had acquired a deeper understanding of the need for privacy and due process protections for the accused.

Tragically, the attackers hoped to deprive America of one of its brightest and most inquiring minds. The unintended result, though, was to reveal the granite-like determination of a righteous man who declared under fire that only God is his judge.

Thomas emerged as a man whom Americans of all races and backgrounds have come to admire.

The U.S. Senate should confirm Thomas to the Supreme Court because he is eminently

qualified and a person of outstanding character and integrity.

As his former confidential assistant, I can say without equivocation that no finer person could be found for the position than Clarence Thomas.

We the undersigned women of the United States Equal Employment Opportunity Commission's Headquarters Office would like to reiterate our strong support for Judge Clarence Thomas' confirmation as a Justice to the Supreme Court of the United States of America. We take this action in light of the recent allegations of sexual harassment.

(Willie King, financial manager and 14 others.)

WE SUPPORT JUDGE CLARENCE THOMAS

We the women of the Equal Employment Opportunity Commission feel compelled to write in response to a recurring question: Why should women support the nomination of Judge Clarence Thomas when his writings and speeches suggest he opposes the very policies which promote opportunities for women and minorities?

Each of the signatories was either hired or promoted into a position of responsibility by Clarence Thomas during his tenure as Chairman of the EEOC. He took a chance on each one of us and provided each of us with a significant career opportunity. Furthermore, we the women of EEOC represent a mosaic of ethnicity, socio-economic backgrounds, educational levels, work experiences, religious beliefs and political affiliations. We are the career women who believe that Judge Thomas' actions speak louder than his words which are so often taken out of context.

(Willie King, financial manager and 76 others.)

The VICE PRESIDENT. Who yields time?

Mr. THURMOND. Mr. President, I yield Senator DANFORTH 10 minutes.

The VICE PRESIDENT. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I ask the Chair to inform me when I have 2 minutes remaining.

Mr. President, let me start by thanking my colleagues on both sides of this debate for their tolerance during the past 3½ months. I know that I have been something of a pest hounding Republicans and Democrats alike, asking for support of Clarence Thomas, and fortunately for one and all that time is now drawing to a close until we get to the civil rights bill, of course.

Mr. President, when the President named Clarence Thomas to be his nominee for the Supreme Court, he described the nominee to be the best person in the United States for the job. Many people poked fun at that description, but this Senator believes that description was well founded.

I believe that Clarence Thomas is what America is all about. He captures in himself the American spirit, the tradition of being able to make the most of your life, and apply yourself, and to contribute something with your life.

Mr. DOMENICI. Mr. President, may we have order, please.

The VICE PRESIDENT. The Senate will come to order.

Mr. DANFORTH. I believed on July 1 that he was an outstanding choice, and I believe that even more today. During the past few weeks especially, Judge Thomas has demonstrated a strength of character which I think is extraordinary. He has endured, particularly over the last 10 days, the agonies of hell. I believe that as a result of that, Clarence Thomas is more sensitive to constitutional rights, to the necessity of legal protection of the people of this country, than most people who could conceivably be nominated for the U.S. Supreme Court.

In a way, Mr. President, this is a debate between those who know Clarence Thomas and those who do not.

What has been striking throughout the past 3½ months is the number of people who have known him very well, who are friends of Clarence Thomas, who have come forward.

Last week, a group of 18 women who had worked with him in various jobs here in Washington held a press conference and described, with tears streaming down their faces, the Clarence Thomas they knew and the concern they had with what was going on in the confirmation process.

I remember very well, Mr. President, the joy last July 1 when I was told by the White House of the Clarence Thomas nomination, and I remember talking to Judge Thomas on the night of July 1. I remember exactly where I was during that phone conversation. I was in the manager's office of the Shrine Club of Kirksville, MO, and I can remember the tremendous joy both in Clarence Thomas' voice and in my own as we visited over the telephone.

But, Mr. President, joy has long since left both Clarence Thomas and JACK DANFORTH and the many friends of Clarence Thomas. There is no joy in these proceedings and, no matter how the vote turns out, no joy is possible.

The joy that we experienced 3½ months ago has turned to pain, and the best that can be said is that in approximately another hour there will be a feeling of relief at the determination one way or another.

Clarence Thomas, especially in the last week, was liberated because he said to me that he does not need this job of being on the Supreme Court of the United States. He can survive without being an Associate Justice of the Supreme Court. Mr. President, very candidly, so can the country.

But what cannot survive, in the opinion of this Senator, is the values that we hold so dear as a country. I do not believe that our values as Americans can long survive the process that we have witnessed particularly during the last 10 days.

Mr. President, 10 days ago, this nomination had been won. The confirmation battle had been won. We believed that we had 60 to 65 votes in favor of Judge Thomas' confirmation. That was after the FBI report had been written. That was after the FBI report had been reviewed by members of the Judiciary Committee. That was after the members of the Judiciary Committee decided to a person that no further action was required, that no further study was necessary.

That was up to 10 days ago. And then, 10 days ago, the confidential document, and apparently details from the FBI report itself, were leaked to the press. And on Sunday, a week ago, this story went public. It was carried as the lead item on the network news and the headline item in the newspaper. That was the beginning of the process that culminated with the hearings before the Senate Judiciary Committee.

Mr. President, it is the position of this Senator that the process that we have just seen is clearly wrong. It is wrong for Clarence Thomas, and it is wrong for the United States. It must be stopped.

The business of interest groups fanning out through the country digging up dirt on a nominee, the business of leaks, of confidential documents, put out to members of the press, the idea that absolutely anything goes if necessary to stop a nominee from the Supreme Court of the United States, this whole process must be ended.

We in the Senate have the power to encourage the process, or we have the power to stop it. We have the power by the vote that we are about to cast to say to our country that the strategy of digging up dirt, the strategy of throwing dirt, the strategy of leaking confidential reports does not work.

Mr. President, I speak to those Senators who find the choice before us to be a difficult choice, who find it to be a close call whether to vote for or against the nomination of Clarence Thomas.

The VICE PRESIDENT. The Chair informs the Senator that he has 2 minutes remaining.

Mr. DANFORTH. I thank the Chair.

The New York Times today took the position that in the case of a close call it should be resolved against the nominee. I believe that if that is the rule that we follow, that the burden of proof shifts to the nominee where charges are made, then the result of that will be to encourage just such a situation to be replicated again and again and again in the future.

The reason the burden against the accuser must be very heavy in a case such as this is to discourage exactly the kind of process that we have seen particularly during the last 10 days.

Mr. President, Clarence Thomas can survive without confirmation by the U.S. Senate. But if we vote against Clarence Thomas we reward a process which is clearly wrong. And for that reason, not for the sake of Clarence Thomas, not for the sake of the Supreme Court, but for the sake of the

basic American standard of decency and fairness, I ask Senators to vote for the confirmation of Clarence Thomas.

Mr. ADAMS addressed the Chair.

The VICE PRESIDENT. Who yields time?

Mr. ADAMS. Mr. President, the manager has asked me to yield time at this point to myself. He will shortly return.

Mr. THURMOND. Mr. President, how much time remains on each side?

The VICE PRESIDENT. The Senator from South Carolina has 15 minutes and 3 seconds.

Mr. THURMOND. How much time does the other side have?

The VICE PRESIDENT. One minute and nine seconds.

Mr. ADAMS. Mr. President, I announce my intention to oppose Clarence Thomas' nomination to the Supreme Court based on his public record, and on the Judiciary Committee's first hearings. I did this back in September, and I urged my colleagues to reject the nomination of Judge Thomas based upon his record, his mishandling of age discrimination cases at EEOC, and his failure to define his constitutional philosophy especially on the right of women to choose. The nominee was willing to express his views on the death penalty and other issues, but refused to admit even having a view on choice.

About Judge Clarence Thomas it can be clearly said there are more questions than answers. His lack of judicial experience is undeniable. His judicial philosophy remains a mystery. And his commitment to protecting the right to privacy in the most critical decisions women must be allowed to make free of Government interference is doubtful.

I heard Prof. Anita Hill's allegations to the public media at the same time it was learned by the American people. I was concerned at that time that these serious allegations had not been considered by the committee, and joined many of my colleagues in pressing for delay in the vote.

I watched this weekend's extended Judiciary Committee hearings in Seattle, along with the rest of America. And like many of my constituents who called my office to express their views, I found the experience troubling and inconclusive. I believe the procedures through which we carry out our constitutional responsibilities must be reevaluated and improved.

I would also hope that the President will look to his own selection process for Supreme Court nominees. That process, as well as ours, clearly needs improvement.

In urging my colleagues to reject the nomination of Judge Clarence Thomas, I suggest they consider the background, experience, and career of the man he is nominated to replace.

My advice to the President would be that he start sending us nominees who truly are the best, rather than well-packaged but undistinguished nominees who fill a rightwing agenda. My consent on this nominee is withheld.

Mr. THURMOND. Mr. President, I yield 12 minutes to the distinguished Senator from Virginia [Mr. ROBB] and if Senator NUNN is not on the floor at this time, I yield the rest of the time to him.

The VICE PRESIDENT. The Senator from Virginia is recognized for 12 minutes.

Mr. ROBB. Thank you, Mr. President.

Mr. President, I had tentatively concluded, prior to urging a delay in this vote, that I would vote in favor of Judge Thomas' nomination. That tentative conclusion was based on my sense of the man and my perception of his convictions, his inner strength, and his core values.

I did not and do not believe that he has any specific ideological agenda, and I do believe that he is prepared to interpret the Constitution and laws of the United States as fairly as possible.

This Supreme Court nomination has been a series of battles. The current battleground is sexual harassment. But in the hearings that preceded the Judiciary Committee's vote there were other issues. Those issues, like civil rights and choice, and their importance should not get lost in the current firestorm.

Judge Thomas and I have discussed affirmative action and quotas at some length. I found in Clarence Thomas a man who understood both the strengths and the weaknesses of the types of remedies our society has constructed to attempt to strike the right balance in improving opportunity for all of our citizens.

Judge Thomas has told me that he supports certain types of affirmative action but that he does not believe that his own son deserves preferential treatment over a poor white child from Appalachia. I find his views on the need to move to class-based remedies to help the disadvantaged of all races intriguing and thoughtful.

The other issue is choice. I have discussed choice and the women's fundamental right to choose with Judge Thomas, and he told me that he had never taken a formal position on Roe versus Wade and believed it was inappropriate to do so in the context of the confirmation process.

I take him at his word. I am concerned that too often nominees are evaluated in the light of a single issue, and I continue to caution against single-issue politics. Concerns about these specific issues have been raised passionately and effectively by individuals and organizations I have sided with much more often than I have opposed.

But I must confess I have also been equally troubled by the view, implicit in much of the articulated opposition to Judge Thomas, that he is less entitled to his own opinions because of his color; that because of his color he must advocate specific means to ends that I believe he and his detractors agree on.

I cannot countenance that restriction on individual freedom any more than I could countenance racism. This is not to say, however, that I would have handled this nomination as it has been handled.

Would I have preferred a nominee who was more forthcoming in his answers on philosophical issues? Yes.

Do I agree with all of Judge Thomas' writings and speeches? No. Would I have preferred a nominee with greater experience on the bench and at the bar? Yes. But, as Governor, I myself appointed an even younger man to the Virginia supreme court, and he conducted himself with distinction.

That was my thinking before last weekend's hearings, and those hearings did not change my instincts on who the man was and what his beliefs are. The hearings clearly challenged my instinct, but after watching all of the witnesses and struggling with their testimony, I am resolved to affirm my original judgment and vote for Judge Thomas' confirmation.

The case presented against Judge Thomas with respect to sexual harassment was compelling. Professor Hill is a credible and serious witness. But Judge Thomas' statements in his own defense were equally strong and compelling. Although some were more persuasive than others, the witnesses who appeared on behalf of both principles were credible. The absoluteness of the differences between the statements of the two principles is impossible for me to reconcile, even after watching their testimony and that of their witnesses.

I am not prepared to rule out the possibility that they both believe they are telling the truth as they remember it. I was struck that it would have been very much out of character for either of the principal witnesses to engage in, condone, or encourage sexual harassment of any kind, and equally out of character for either of them to lie. But I cannot reconcile their individual statements. In the end, I must evaluate the testimony made on their behalf. Professor Hill's witnesses corroborate the fact that they had indeed raised the issue long before Judge Thomas was nominated for either court. Judge Thomas' witnesses say that what she alleged is totally out of character for the judge. At the bottom, I am swayed by the fact that witnesses who testified on Judge Thomas' behalf know both the judge and Professor Hill, and they have sided with Judge Thomas.

There is no question in my mind that all of the individuals and groups whose knowledge of Clarence Thomas comes principally from his speeches, his writings, and the information presented during the confirmation process, those who feel most passionately about his nomination are overwhelm-

ingly opposed, and that includes most of those with whom I have been aligned politically over the years, and they will be understandably disappointed with my vote.

On the other hand, I am equally convinced that all of those whose knowledge of Clarence Thomas is based on actually working with or for him, or on some other regular, personal, or professional basis—in other words those who know Clarence Thomas best—uniformly confirm my own impressions of the man and his capabilities. I have talked to someone in this latter category by telephone late last evening as I was concluding the agonizingly difficult process that all of my colleagues have gone through. That person that I spoke with is someone I have known and respected for over 15 years. That person happens to be a lawyer, an Afro-American, and a woman who takes allegations of sexual harassment seriously, who describes herself as a liberal, and is adamantly pro choice. She also happens to have been a law school classmate of Judge Thomas and probably knows him as well as or better than anyone who testified for or against him. And she supports him to the hilt.

She believes, as I believe, that Clarence Thomas has qualities that are not as apparent to those primarily concerned with ideology. It is with a combination of visceral instinct about his core values, an acknowledgment that those who know him best are his most ardent supporters, and hope that he will ultimately surprise many of those most concerned about his ability to fulfill the legacy of Thurgood Marshall, that I will vote for Clarence Thomas for the Supreme Court of the United States.

I yield the time remaining.

Mr. THURMOND. How much time do we have?

The VICE PRESIDENT. Six minutes, 43 seconds.

Mr. THURMOND. Mr. President, I yield a half minute to Senator SYMMS.

Mr. SYMMS. Mr. President, prior to this weekend's 3-day hearing in the Judiciary Committee, I spoke on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court and indicated my intention to vote for Judge Thomas' confirmation. I made my decision based on the record of Judge Thomas' qualifications, as established in the Judiciary Committee hearings, and on the basis of my 10-year acquaintance with Clarence Thomas.

I will not reiterate those qualifications here but will say again the overwhelming weight of evidence indicates that Judge Clarence Thomas has the intellect, legal background and experience, and the quality of character to make a superb Associate Justice of the Supreme Court.

Since my original remarks, however, the Nation has become embroiled in the allegations brought against Judge Thomas by Anita Hill, and we have been subjected to 3 days of scandalous charges presented in lurid detail before a committee of 14 men and a viewing audience of millions. I, like thousands of my constituents in Idaho and millions of people across the country, have watched and listened to the committee proceedings with great interest and a very sad heart.

I am sad, in part, for Anita Hill. Though I found her story unconvincing and totally uncorroborated by the witnesses who appeared on her behalf, I know her life will not be the same hereafter and she will know many difficult days and months ahead.

I am also sad because of the way those hearings and this controversy have reflected on the Senate as an institution. I believe Chairman BIDEN and Senator THURMOND handled this matter properly from the beginning, given Professor Hill's insistence that her allegations be treated confidentially and made known only to the members of the Judiciary Committee.

But I think the American people perceive justifiably that these charges, coming as they did at the 11th hour, are too basely political, and the Senate has allowed itself to be caught up in the whirlwind of slander intended solely to impugn the character of the nominee.

But most of all, I am sad for my friend, Clarence Thomas, and his family, whose anguish and justifiable anger were so apparent to those who watched the proceedings. I have known Clarence Thomas for 10 years. Without doubt, he is one of the most honorable and decent men I have known in public or private life. The allegations against him are wholly out of character and beyond belief for any of us who have the privilege of knowing Clarence, and I believe the women who worked longest and most closely with him attested convincingly to that fact during the weekend hearings.

Mr. President, when the Senate last week delayed the vote on the Thomas nomination in order that these hearings might be held, Senator DOLE said, this will be a test of Judge Thomas, a test of his character. Indeed, it was just such a test; a test the likes of which most of us in this body would be hard-pressed to pass because of the demeaning, degrading slanders made against a reputation built over 40 years. In my judgment, Clarence Thomas passed that test with flying colors. His fortitude in the face of this inquisition, more than any other factor, convinces me of his fitness for service on the High Court.

I am pleased and proud to support the confirmation of Clarence Thomas, and I wish him well during his lifetime of service there.

Mr. THURMOND. Mr. President, I would like to follow up on one point that Senator SPECTER made earlier regarding Ms. Hill's credibility.

Prior to her joining Judge Thomas at the Department of Education, Ms. Hill was employed with the Washington law firm of Wald, Harkrader and Ross.

Ms. Hill testified that, "It was never suggested to [her] at the firm that [she] should leave the law firm in any way. * * *" She further stated: "Well, I left the law firm because I wanted to pursue other practice."

Ms. Hill was questioned about her employment options when Judge Thomas was to become the Chairman of the EEOC. She stated that, "She faced the realistic fact that she had no alternative job. While [she] might have gone back to private practice perhaps in [her] old firm."

Mr. President, I have received a copy of an affidavit from Mr. John L. Burke, Jr., dated October 13, 1991. Mr. Burke has stated that he was a partner with the firm of Wald, Harkrader and Ross when Ms. Hill worked there. In fact, Mr. Burke evaluated Ms. Hill's work and has stated that, "I expressed my concerns and those of some of my partners, that her work was not at the level of her peers nor at the level we would expect from a lawyer with her credentials, even considering the fact that she was a first-year associate. * * * I suggested to Anita Hill that it would be in her best interests to consider seeking employment elsewhere because, based on the evaluations, her prospects at the firm were limited * * * based on Anita Hill's performance evaluations at Wald, Harkrader and Ross, returning to that law firm at the time Clarence Thomas moved from the Department of Education to the Equal Employment Opportunity Commission was not an available option."

Mr. President, clearly the statement by Professor Hill is in direct contradiction with the statement made by Mr. Burke, a former partner of the Wald law firm who evaluated her performance. I find Professor Hill's testimony to be an inconsistency which should be pointed out.

Mr. President, I find it disturbing that Professor Hill was not straightforward with the committee about this matter. Clearly, she knew that there was dissatisfaction with her performance at the Wald law firm. Her testimony about her employment there was clearly misleading and inaccurate. This point should be made and bears on her credibility in relation to the rest of her testimony.

Mr. CRANSTON. Will the Senator yield?

Mr. THURMOND. On your own time.

Mr. CRANSTON. I would like to mention another affidavit that is contrary to what the Senator has said.

Mr. THURMOND. Mr. President, I have not yielded the floor.

The VICE PRESIDENT. The Senator has not yielded the floor.

Mr. THURMOND. Has Senator NUNN come in yet?

Mr. CRANSTON. Will the Senator yield briefly, if nobody wishes to speak?

Mr. THURMOND. I yield to Senator SIMPSON the remainder of the time.

The VICE PRESIDENT. The Senator from Wyoming is recognized.

Mr. KENNEDY addressed the Chair.

The VICE PRESIDENT. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, may we review the time situation?

The VICE PRESIDENT. The Senator from Wyoming is now recognized for 2 minutes, 30 seconds. That is the remainder of the time, and there is no time remaining on the other side, prior to 5:30.

Mr. SIMPSON. I would like to recognize my friend from California or my friend from Massachusetts, but I must yield the remainder of the time to Senator NUNN of Georgia.

Mr. KENNEDY. Will the Senator yield?

The VICE PRESIDENT. The Senator from Georgia is recognized.

Mr. THURMOND. We yield the remainder of the time to Senator NUNN.

Mr. NUNN. Mr. President, I will vote to confirm Judge Thomas.

The remarkable story of Judge Thomas' rise from poverty to prominence is by now well known. A native of Georgia, a graduate of the Yale Law School, he has had a distinguished career in Government as an Assistant Secretary of Education, as Chairman of the Equal Employment Opportunity Commission, and as a judge on the prestigious U.S. Court of Appeals for the District of Columbia Circuit.

When I announced earlier this year that I would support the nomination of Judge Thomas, I did so because I was convinced that he met the tests of intellect, integrity, and openmindedness.

Now we are faced with a different set of circumstances, an allegation that in his official capacity as Assistant Secretary of Education and as Chairman of the Equal Employment Opportunity Commission, he sexually harassed a subordinate. This is a grave charge, because it goes to the integrity of the nominee.

Moreover, in light of the unprecedented proceedings of the last week, many have come to view Professor Hill as "Everywoman" who has ever suffered the injustice of sexual abuse and Judge Thomas as "Everyman" who has ever abused a subordinate.

Sexual harassment, in any form, is simply unacceptable. As chairman of the Committee on Armed Services, I have followed very closely the challenges that our military forces have faced during the period of greatly increased opportunities for women in the armed forces. I am keenly aware of the devastating impact of sexual harassment on women, the harm that it causes to the work environment, and the actions taken by the armed forces to combat sexual harassment by superiors against subordinates.

It is important to remember, however, that we are not today voting on the question of whether we should send a message to the country on the issue of sexual harassment by "convicting" Judge Thomas. Nor are we voting on the issues of whether sexual harassment exists in this country, whether we regard it as serious, or whether it should be considered as a vital factor in this or any other nomination. It does exist. It is serious. And an allegation of sexual harassment must be given the most serious consideration in the nomination of any person for high Government office.

Because this is a nomination, it is incumbent upon us to treat the issue with the degree of care and responsibility that is appropriate for a confirmation proceeding. This is not a trial. The allegations have not been restricted to the normal 30- and 180-day statutes of limitations that apply to such equal employment opportunity complaints. The issues have been developed in a forum unguided by rules of evidence or relevancy, and without the type of cross-examination by lawyers for the parties that would normally take place in a courtroom.

Our constitutional responsibility is to vote on whether the Senate will give its advice and consent to the President's nomination. There are numerous theories as to what the appropriate standard should be, but in the end, each Senator must exercise his or her own judgment. The standard which I have consistently applied has two parts: First, does the nominee have the requisite training and experience to be qualified for the position? And second, does the nominee have requisite character and integrity to demonstrate fitness for high public office? Those are the tests—qualifications and fitness.

As chairman of the Armed Services Committee, I have had the opportunity to review FBI files on hundreds of nominees, and military files on numerous military nominations. It comes as no surprise to me that after the lengthy hearings of the past week we are largely in the same position as when the week began.

Professor Hill has made her allegations, and Judge Thomas has denied them. Despite the media attention, this is not a TV show, and there is no script writer to give us the satisfying conclusion we have come to expect through many episodes of Perry Mason. Instead, we have information—the same type of information we routinely review in FBI files and closed hearings, upon which we must make a decision.

FBI files and testimony in closed hearings often closely resemble the type of information we have heard in open session in the last week. A responsible, credible citizen presents information about a nominee on a matter of personal behavior, of which there are no direct witnesses and little direct corroborating evidence. The nominee denies the allegation. But because there is no direct evidence on the matter other than the testimony of the two individuals concerned, the FBI files and the closed hearing do not definitively resolve the matter.

In such a case, I look closely at the individual's background and the FBI files to determine whether there are patterns of habits or behavior that would make it more or less likely that the individual behaved in the offending manner.

In this case, I have carefully reviewed all of the evidence that is before us regarding the allegations made by Anita Hill. In my final analysis, I believe the weight of the evidence supports Clarence Thomas, including: his unambiguous denial under oath of the charge; his credibility as a witness, his record of untarnished public service, and his reputation for truthfulness; the testimony of his fair and professional treatment of female subordinates; Anita Hill's decision to follow him to the EEOC after the alleged harassment had begun and her continued contact with him, though, according to both Hill and Thomas, for professional reasons, after she left the EEOC; and the lack of any strong evidence of a pattern of similar behavior by Clarence Thomas.

I do not, however, join those who believe that Anita Hill's testimony is incredible or even unbelievable. There is much that lends weight to her testimony and demands that her testimony be strongly considered.

I have talked to too many women who have experienced sexual harassment in silence and without complaint. I know that some of my colleagues conclude that this could not have happened the way Anita Hill has described. I believe that it could have—but I do not believe the weight of evidence sustains the conclusion that it did.

I am convinced that much weight must be given to the fact that there is, in this case, no substantial evidence of any pattern of similar behavior by Clarence Thomas. While I recognize that a pattern of similar behavior does not always accompany an incident of sexual harassment, I believe that in close cases such as this, the presence or absence of a pattern is very important.

In the record before us, I find no credible evidence of a pattern of similar behavior. On the contrary there is considerable and significant evidence of his exemplary treatment of women.

In casting my vote, I want to make a number of things clear. I believe that this whole case has underscored the need for men in this country to do some serious soul searching about their behavior toward their female col-

leagues in the workplace—whether it be direct sexual advances, the casual use of offensive language, or telling jokes with sexual overtones that women may find particularly offensive. Sexual harassment does exist—it is a real and continuing problem that men need to recognize and be increasingly sensitive to.

While women in this country have a right to demand that men be sensitive to this issue, they also have a corresponding obligation to make every effort to report in timely ways claims of sexual harassment. While I can understand that delay or silence may seem like a rational alternative to many women in these kinds of situations, we must recognize that timeliness is essential to a fair and accurate resolution of these types of claims. Even in cases where women choose not to file a legal claim, employers must encourage them to let their male colleagues know when their behavior, however unintentionally, is offensive.

The confirmation process we have witnessed over the last week has been a truly wrenching experience for Clarence Thomas, for Anita Hill, and, I believe, for all Americans. I hope that, if nothing else, it brings all Americans, both men and women, a little closer to understanding each other's needs for fairness, decency, and respect in the workplace.

Mr. GLENN. Mr. President, I rise to reiterate my position in opposition to the nomination of Judge Clarence Thomas to be an Associate Justice on the U.S. Supreme Court.

I would like to state first that my decision to oppose the nominee is not based on recent developments regarding allegations of sexual harassment. As much as I personally abhor harassment in the workplace, I feel that neither guilt nor innocence was, or could be, determined by last weekend's proceedings. Therefore, I have not included that in my decisionmaking process.

The advice-and-consent role of the Senate, under our constitutional system of separation of powers, is never more important than in considering a nomination to the Supreme Court. Our third branch of government is comprised of only nine persons, and those persons are appointed for life. That fact makes the Senate's role in the confirmation process a highly important duty—one with which we cannot afford to take chances.

Judge Thomas' nomination, at age 43, is particularly important since he could serve for at least the next third of a century.

Judge Thomas' rise from poverty and a disadvantaged childhood is indeed a shining example of what is possible in America, particularly in the last few decades.

But laudable as those accomplishments are, there are other considerations for a Supreme Court nominee, specific qualifications which we should expect in a nominee for the very highest court in the land.

While he is a graduate of the prestigious Yale Law School, Judge Thomas has had relatively little experience on the bench, having served only 18 months. Moreover, he had comparatively little courtroom experience before that.

Perhaps even more important than his lack of experience is Judge Thomas' absence of a clearly stated judicial philosophy.

By judicial philosophy, I mean the approach that the nominee would bring to the Court in deciding how to interpret the U.S. Constitution. Evidence of a nominee's judicial philosophy can be determined through an examination of his or her past actions and stated positions, and through a nominee's answers to direct questions from the Senate.

But during his confirmation hearings, Judge Thomas in effect asked the committee not to judge him by his earlier statements, either his own or those expressed in support of administration policies he was carrying out. At the same time, he gave the impression of either not having, or not wanting to share, his longer term views on the application of constitutional law.

That leaves little on which to base a knowledgeable opinion of his nomination. It was notable that the Judiciary Committee, after very extensive confirmation hearings, came to the same conclusion with a 7 to 7 tie vote.

The American Bar Association, following their examination of the Thomas record, gave him only its very minimal approval rating.

By nominating Judge Thomas, the President allowed Congress an opportunity to perform only one-half of its constitutional role. That is, we were allowed to consent to the President's nominee. If Congress had been permitted to also advise the President on possible nominees, then the chances are great that Judge Thomas would not have been nominated.

Congress, as a bipartisan institution, is more inclined than a President to provide for a balanced Court. I am inclined to believe that Congress would have followed the example set by President Eisenhower and would have made some attempt to balance the Court so as to make it more representative of the comprehensive views of the American public. What is wrong with a President requesting and receiving a list of possible candidates from the congressional leadership, thereby letting Congress fulfill its advice as well as its consent role?

This Nation has many experienced constitutional scholars, lawyers and jurists from among which a Supreme Court justice could have been nominated—nominations which would carry far, far less uncertainty than that of Judge Thomas. I urge the President to make such a nomination.

I regret very much that I must come to this conclusion because I am a true admirer of Judge Thomas' rise against odds. However, for the reasons stated, I cannot in clear conscience support this nominee. I will vote against confirmation.

Mr. NICKLES. Mr. President, today I rise to reaffirm my support of Judge Clarence Thomas for the U.S. Supreme Court.

Eleven days ago, I stood before the Senate and expressed my support for Judge Clarence Thomas to become an Associate Member of the U.S. Supreme Court. At that time, there were numerous reasons for which my support was given. I was impressed with Judge Thomas' demeanor under the intense scrutiny of the Senate Judiciary Committee. At that time, I believed he conducted himself extremely well as Chairman of the Equal Employment Opportunity Commission. He had been confirmed by the U.S. Senate and its Judiciary and Labor Committees four times in the past 10 years. I noted his dynamic rise to his position on the Circuit Court of Appeals for the District of Columbia. In light of the strenuous assaults on him, I questioned the motives of his opponents reminding them that less than a year and a half ago this nominee had been confirmed by an uncontested vote of this Senate. I asked, "What has changed over the last year and half to cause more opposition now than in the past." I asserted that nothing had changed during the time of what I thought was the end of his confirmation process. I had no doubts about my intention to vote to confirm Judge Thomas to the Supreme Court.

Obviously, much has happened since my first floor statement on Judge Thomas' nomination to the Supreme Court. Over the past week, like the rest of the Nation, I watched the extended hearings involving the 11th-hour allegations made by Prof. Anita Hill. During these hearings, I had resolved to listen with an openmind. This is what I did and found that Professor Hill made a good presentation of her allegations. Such allegations are serious and need to be investigated. If these charges were proven to be true, it is clear in my mind that no one guilty of sexual harassment should be seated on the highest court in the land. After reviewing approximately 30 hours of testimony, in which both sides diametrically opposed each other, I found no conclusive evidence supporting her allegations. Judge Thomas categorically denied every allegation that Professor Hill made. Further, Ms. Hill's witnesses could not corroborate the specific allegations she made as pointed out in questioning by Senator SPECTER. While these allegations intensified my scrutiny of the nominee, I remain firm in my support for Judge Clarence

Thomas. Every aspect of his life has been an openbook before our Nation for the last 100 days and most certainly in the last week.

Let me stress to my colleagues, this is not a vote for or against Anita Hill. The hearing results were inconclusive—no one came away with a clear finding. Therefore, even as some opponents of Judge Thomas have stated, that the vote today is on Judge Thomas' ability to serve on the U.S. Supreme Court and not on any perceived findings from these extended hearings.

Even though the weekend's hearings were emotional and dramatic, I must voice my concern and criticism of the handling of this matter. It is my opinion that certain members of the committee have acted outside the legal bounds, thus skewing the process for future confirmation hearings. Both Professor Hill and Judge Thomas are unfortunate victims of this process. Professor Hill called for confidentiality of her sworn FBI affidavit and it was illegally disclosed. This was a clear injustice to her and Clarence Thomas. Confidentiality of such statements is paramount in the execution for our democratic principles. For this reason, an investigation should commence, and those responsible for divulging the statement punished. Much must be done to correct our nomination process to prevent this travesty from ever happening again.

Mr. THURMOND. Mr. President, I want to first thank all of those who supported Judge Thomas for a position on the Supreme Court. I want to thank Senator BIDEN for the commendable, fair way that he handled this nomination process especially the difficult situation of the past week. I also congratulate Senator DANFORTH for the diligent, sincere efforts he undertook on behalf of Judge Thomas. I want to express my appreciation to Senator SPECTER and Senator HATCH for the role they played, especially during the last 3 days of the Judiciary Committee hearings on this matter. Additionally, I thank the other Republican members of the Senate Judiciary Committee for the long hours and effort they contributed to this difficult process.

I also want to thank members of my staff for the long hours and dedication they displayed since Judge Thomas was nominated by President Bush. I commend the diligent, able efforts of my chief of staff, Duke Short. I also want to express my gratitude to Terry Wooten, minority chief counsel and staff director of the Judiciary Committee, and Melissa Riley, chief investigator for the Judiciary Committee, for the long hours and dedicated efforts each contributed and undertook since Judge Thomas was nominated. I thank Thad Strom, general counsel for the committee, and John Grady, counsel to the committee, for their assistance in this matter.

Mr. CHAFEE. Mr. President, I would like to take a moment to discuss the upcoming vote on the nomination of Judge Thomas.

Nearly 3 weeks ago I outlined my thoughts on the judge. I noted that while his thinking may best be described as conservative, the judge, in my view, would be an independent voice on the Court. And thus I stated my support for his nomination.

Then, over the weekend, a confidential FBI report detailing allegations of sexual harassment was made public. I do not want to spend too much time on the how's, why's, or wherefore's of that public disclosure. But I will say that something is terribly wrong when that is how business is done, in the Senate or in any other body. We have in this country a deep-rooted allegiance to fairness—to a constitutional process that protects individual rights—unlike that of any other nation in the world. The leaking of the raw information of an FBI report to the media directly subverts that process in a dangerous way: it results in a trial by publicity in a court of public opinion. Leaking the report may further the cause of the public's right to know, but it is bitterly, bitterly unfair to both the alleged victim and the alleged perpetrator. I hope that this situation never occurs again in this body.

At 2 a.m. yesterday morning, the Senate Judiciary Committee concluded 3 lengthy days of hearings on the sexual harassment allegations made by Prof. Anita Hill against Judge Clarence Thomas. Testimony from 23 witnesses was heard over the course of 32 hours.

The issue of sexual harassment is a serious one, and never before has it been discussed in such a public forum. Sexual harassment of women is an ugly fact of life. It is an issue that too often is not given enough credence by too many. Certainly the attention such cases receive is less than complete, and more often than not skeptical. Cases are quite often dismissed with a comment that women are too sensitive, or that they misconstrue a friendly but harmless word or gesture. But sexual harassment need not be a pinch or a squeeze; it can be a look, a comment, or anything that creates an intimidating, hostile or offensive working environment. It is a terrible problem that I doubt many of us in this body can personally understand. We have a long way to go.

Given the general attitude toward sexual harassment, it is not surprising that many women do not report violations. A recent New York Times telephone poll revealed that more than one-third of the women interviewed have suffered some form of harassment; only a handful reported the problem. I believe this is true.

So this matter is serious, and it is one on which emotions run high. But to consider fairly the allegations that have been made we must put aside both emotions and politics, both of which are prevalent at the moment. Right now, this body is not just debating the allegation against Judge Thomas and that subject alone. Given the strong reactions to an allegation of sexual harassment, we now are debating the treatment of women in the workplace.

Such a path can be dangerous. We must give the allegation serious and careful consideration, but we also must keep in mind that it is an allegation; and that no matter how justified the anger felt about the generally cavalier attention given sexual harassment charges, we must focus on the facts and evidence as we know them in this case.

The difficulty of determining what happened in sexual harassment cases is great. There is no one single pattern of behavior for harassment cases. Thus, in some cases it is common that the concrete evidence consists solely of one person's testimony versus another's, and it quite often comes down to a question of integrity. To my view, that is what has happened here.

I have watched a substantial portion of the hearings; I have heard witnesses on both sides. But the truth in this difficult case has not become self-evident.

It is still my decision to vote in favor of Judge Thomas. I will not do so because I think the charges or the issue are frivolous. I will do so because I cannot reconcile the Judge Thomas described in the allegation with the Judge Thomas that his employees, colleagues, and friends have described. It seems inconsistent with his life, his beliefs, his actions, and indeed, with his very identity.

By all accounts Judge Thomas has spent his life fighting bias and prejudice, and he feels fiercely, intensely, and vehemently that any kind of discrimination in any shape, size, or form is wrong. While there may be considerable disagreement with the policies he might adopt to fight discrimination, I think there was no dispute about the integrity or character of the judge—until this charge.

Judge Thomas seems to have an identity that is inextricably bound up in a belief in fairness. He seems to have treated all he met on the basis of this belief. And according to several dozen women who worked with and under him at EEOC, he extended that treatment to all in the workplace, including women. It appears, too, that he brooked no violations of discrimination guidelines under his tenure at EEOC, whether the violations were based on gender, race, origin, or even sexual preference.

I come back time and time again to the life and times of Judge Thomas. It is not a matter of disbelieving one witness over another. I just cannot reconcile the man described in the allegations with the man described by friends and colleagues—both men and women.

And without more than one accuser, no matter how credible, I cannot in good faith conclude that he is guilty of this behavior.

This has been a painful time not only for the individuals involved, but for the Senate as an institution. Some say that at the very least, as a result of this public airing, the people—particularly men—in this country have become far more aware of how terrible sexual harassment is. It is important that that understanding be furthered. But in this case, the costs have been heavy for both Judge Thomas and Professor Hill. It has been a dirty unpleasant fight, with character assassinations galore, and I am truly saddened by the pain this has caused both of them.

Mr. HATFIELD. Mr. President, these past few days have been perversely riveting. Like many Americans, I spent much of last weekend immersed in the hearings on the nomination of Judge Clarence Thomas to the Supreme Court, and it is apparent to all that the Nation is now suffering through a most tragic and troubling time.

The allegations of Professor Hill and the denials by Judge Thomas have presented this body with a set of extremely complicated circumstances. Each individual has exemplary career and personal backgrounds, each individual is supported by character witnesses who speak for their veracity. And each of them took an oath before the Judiciary Committee to speak the truth. Yet, they both cannot be telling the truth.

Mr. President, 10 days ago, I came to this floor and announced my support for Judge Clarence Thomas. My support for Judge Thomas, as with other nominees, is based primarily on his character and fitness. As I stated then: Clarence Thomas is well qualified to sit as an Associate Justice on the U.S. Supreme Court. I also emphasized my opinion that the confirmation process has done precious little to enrich the image of the Senate. Little did I know then the unrivaled confirmation spectacle that would very soon be showcased on national television.

Four days after I spoke in favor of Clarence Thomas, new and disturbing allegations were made against the nominee by Professor Hill. Professor Hill's charges reflect directly upon the character and fitness of Judge Thomas, and are therefore of great concern to me.

Like many of my colleagues, I took the time to carefully review the report prepared by the Federal Bureau of Investigation. I was also thoroughly briefed on the matter by the chief investigator for the Senate Judiciary Committee. After this thorough review of all the available information, I determined that I could not support a delay. In this position, I did not prevail, and the hearings commenced.

It was clear to me that a delay and hearing for this matter would resolve very little while bringing out the very worst in the Senate's public confirmation process. And that is exactly what happened. By all accounts, virtually nothing positive has come from this spectacle. The cost of a delay for this full-blown public hearing has not been at all worth the benefits—benefits for which I continue to search.

But, Mr. President, let us talk about the costs, because the casualties of the Senate confirmation process continue to pile up like so many casualties of war. Nominees and witnesses alike wither under the white hot glare of the media spotlight and the searching beam of secret background checks. Once sterling reputations are clumsily smudged with the dingy tarnish of crude innuendo. This body must take action to stop what is now becoming commonplace in our confirmation process. We must have no more political casualties in the judicial confirmation process.

Over the last week alone, Judge Thomas, Professor Hill, and others have permanently lost part of their professional standing and dignity. And for what? For the sake of a process that has turned on them and abused them very badly. We must know that future nominees and future witnesses will certainly think long and hard before subjecting themselves to this political bloodsport.

Another cost was clearly demonstrated to me last night as I reviewed the flood of calls my office received over the weekend. An angry father took the time to call my office for a little advice. His family had watched the confirmation hearings. This father wanted to know just how he was to answer his childrens' questions about the explicit sexual matters mentioned. And what do you say?

Few would argue that this confirmation spectacle has enhanced the standing of the Senate. The many polls that have been run over the last several weeks show that Americans have been confused by many things throughout these proceedings. There is, however, nearly universal condemnation of the Senate's handling of this matter.

And, of course, no one is more disappointed in the leak of this sensitive, confidential information than am I, and I support the calls to investigate this improper conduct. Leaks of any confidential material must not be tolerated.

But process aside, the Senate is nevertheless called upon to render a decision on this nomination. To the best of my ability and using the most credible information available to me, I have made my decision to support Judge Thomas. Judging another person's character is never easy—one cannot get inside a person's mind to know every thought, nor can one follow every second of that person's life to have an idea of their behavior in all circumstances. But the Senate is charged with making a judgment and in observing what is known of Judge Clarence Thomas. I have come to the conclusion that he is fit to serve.

Yet, I am also troubled that, for many, the Senate's vote to confirm or not confirm Judge Thomas has taken on another meaning. Like it or not, some will view this vote as a national referendum on a woman's ability to stand up against harassment. A vote on whether this country is prepared to clearly signal to every woman in this country—old, young, rich, poor, educated or illiterate—that she has the right to her dignity and the right to seek redress from abuse.

I cannot fully gauge the impact these past few days have had upon our Nation, but I can tell you how they have impacted me. I now have a much greater knowledge of and appreciation for the problem of sexual harassment. Over the past days, I have heard so many painful stories from friends, from relatives, from constituents who either experienced harassment themselves or knew someone who had.

Sexual harassment is a detestable problem and it can wound women deeply. The personal pain brought on by such harassment is only compounded by an often hostile societal environment. Continued punishment is often heaped upon the victim for exhibiting the courage to demand that the harassment stop.

This is wrong. The victim—any victim—should not have to pay twice. This whole episode has shown our Nation that we need to rethink just how far we have come, or perhaps not come, in our efforts to achieve equality and fairness for everyone regardless of color, religion, or gender.

But our effort to find an end to the injustice of sexual harassment should not begin by sacrificing justice for one individual. No matter how hard some are attempting to paint this vote as a referendum on women's rights or to somehow force a kind of penance for all of the tens of thousands of cases of sexual harassment—this is still a vote to confirm an Associate Justice of the Supreme Court.

The Senate is now considering a number of bills that deal directly with the issues of violence against women, sexual harassment, and sex discrimination in the workplace. I support and am a cosponsor of legislation in each of these areas. And these are subjects upon which the Senate is expected to act very soon.

So, let us be clear: we are here to vote on the confirmation of a Supreme Court nominee. We have before us a nominee who has served ably in public service for half his life—after living the first half of his life knowing both the wretched want of poverty and the chal-

lenge of being a member of a racial minority.

Clarence Thomas, the person, is made complete by his career and personal history. This Senate has heard that history and had significant opportunity to question him on the greatest possible range of matters. What has happened to him and to his family over this past week is tragic and I do not blame him when he says that he would never again choose to endure such a callous process.

But the bottom line here is that Judge Thomas is qualified. Nothing which took place at the hearings of these past few days has convinced me otherwise. I therefore continue to support his nomination and will cast my vote to confirm him.

Mr. KASTEN. Mr. President, I support Judge Thomas for confirmation because I believe he is uniquely qualified to serve on the Supreme Court. His intellect, education, and experience in both the private and public sectors will stand him in good stead on the Court.

His personal experiences, from childhood to the present, will provide the Court with a different viewpoint. He has seen the power of Government wrongfully oppress minorities. No one else on the committee shares this life experience.

I agree with Yale Law School dean, Guido Calabresi—certainly no conservative—that Judge Thomas has not turned his back on those in need, particularly African-Americans, and his awareness of their needs keeps him open to argument as a Justice should be.

Such charges as those made by Professor Hill certainly merit concern. These allegations concerning conduct 10 years ago were in the record of the Judiciary Committee, the FBI investigated them, but they were not found to merit further consideration.

An illegal leak thrust this issue into the limelight and much of America witnessed the hearings over the weekend. It is a basic tenant of American law, based on fairness, that one is innocent until proven guilty. While anyone can make allegations, an accuser must bear the burden of proof.

I do not believe that burden has been met, and in fact believe that there is reason to doubt these allegations. Professor Hill followed Judge Thomas from the Department of Education to the EEOC, continued to stay in friendly contact, and the specifics of the allegations seem to have grown over time.

I am also greatly disturbed by the possibility that Professor Hill thought that Judge Thomas might have withdrawn if she came forward. This calls into doubt the real reason for which she came forward.

There was very convincing evidence by those familiar with the working relationship between Judge Thomas and Professor Hill that such conduct as she alleged was totally out of character with Clarence Thomas. The charges were not proven, the presumption must remain with Judge Thomas.

In arriving at my position, I am very aware that some see a white, male Senate passing judgment on the real problem of sexual harassment. But as Chairman BIDEN so aptly stated during the hearings, the hearings were not a referendum on the terrible problem of sexual harassment. They were to determine whether it occurred in this instance. I do not believe that the burden of proof was met by the accusers.

Finally, Mr. President, with the conformation of Clarence Thomas we will have a first-rate Associate Justice on the Supreme Court. Judge Thomas' accomplishments and humanity could not be denied even by an enormous political campaign to defeat him, or recent personal attacks.

The media display brought about by an illegal leak of information does mean that the process, and this leak in particular, must be investigated. But, that is for another day.

I urge my colleagues to vote for the confirmation of Clarence Thomas. He will do honor to the Court.

Mr. DASCHLE. Mr. President, I made my decision to vote against the confirmation of Judge Clarence Thomas on Friday, October 4, before it was revealed that former employees of Judge Thomas had made charges of misconduct against him involving sexual harassment. I made my decision after carefully reviewing Judge Thomas' record, his past statements and writings, and his testimony before the Judiciary Committee.

My reasons for voting against Judge Thomas' confirmation are the same today as they were on October 4. I cannot support Judge Thomas because there are people of greater distinction and more experience who are better qualified than Judge Thomas to serve on the Supreme Court. Even more important, I cannot support Judge Thomas because he has left too many unanswered questions about his judicial philosophy. Because of these unanswered questions—and because of my doubts about the sincerity of his responses to the Judiciary Committee regarding his philosophy—I cannot turn over to Judge Thomas the enormous power of a position on the Supreme Court.

The hearings over the weekend did not change my mind. Having reached the conclusion that I would vote against Judge Thomas before I learned of the serious charges of sexual harrassment against him, and after having carefully reviewed the testimony from the hearings this weekend, I must state that the hearings, including Judge Thomas' testimony, did not lead me to believe that he is any more qualified for the Court than I thought before. If anything, the hearings raise even more questions.

Because I want to present clearly the thinking that went into this important decision to vote against Judge Thomas' nomination for one of the most powerful positions in our Government, I ask that I be permitted to submit the following statement prepared October 4.

THE CONFIRMATION OF JUDGE CLARENCE THOMAS

(Prepared October 4, 1991)

Mr. DASCHLE. Mr. President, a position on the Supreme Court is one of the most powerful positions in our government. The Court's decisions affect the lives of millions of Americans. These decisions reach into the most intimate aspects of people's lives. If we vote to confirm Judge Clarence Thomas as an associate justice we are voting to hand him enormous power. This step should not be taken lightly. Because of the importance of this step, we must search deeply into the nominee's mind and heart to make sure the nominee is a fair, thoughtful and decent person.

I have used three criteria to evaluate nominees for the Supreme Court. First, I want to know that the candidate has the proper moral character to sit in judgment of others; second, I want to be sure that the nominee has demonstrated intellectual achievement and distinction that mark him as one of the leading persons in his field; and, third, I want to be sure that the nominee has developed a judicial philosophy that fits within the mainstream of American legal thinking, not a philosophy that is radical or extreme.

I have too many doubts about Judge Thomas to support his nomination. Questions have been raised by several renowned legal scholars about his intellectual achievement and distinction. There are people with greater legal standing and conservative philosophies who would be better for this job than Judge Thomas. But, for me, the most important questions concern Judge Thomas' judicial philosophy. Does he hold a judicial philosophy that is outside the mainstream?

I do not oppose Judge Thomas because he has been a called a conservative. I believe that the President has the right to nominate judges for the Supreme Court that share his philosophy. I have voted to confirm the nominations of conservative judges, including Judges Kennedy and Souter. The question is whether the nominee holds a judicial philosophy that is extreme.

The Supreme Court is not a laboratory to experiment with legal theories. I will not support a nominee who is on a crusade to rewrite the law because the nominee has found interesting new legal theories. The cases that come before the Court involve real people. The decisions in these cases reach beyond these people to affect the lives of millions of Americans. Nominees to the Supreme Court must show that they are not indifferent to the effects of their decisions.

One of the threads connecting the nominees of Presidents Reagan and Bush is the nominees' indifference to the effect of their decision on peoples' lives. Each of the nominees, in some part of their legal careers, expressed skepticism or outright hostility to the principle that the Constitution protects a persons's privacy. Each, to a greater or lesser degree, showed an eagerness to extend the state into the most intimate aspects of peoples' lives. Judge Thomas, however, has expresed views that are more extreme than most other nominees.

Judge Thomas' writings and statements prior to his nomination to the Supreme

Court show a high degree of indifference to the effect of the law on peoples' lives and an attraction to legal theories that are radical and extreme. He has made insensitive remarks in public regarding his family and people who are less fortunate. He has spoken favorably of legal theories that would strike down laws to protect public health and safety, including laws providing for federal inspection of food and meat products.

I began this process planning to vote for Judge Thomas's nomination to the Court. I hoped that Judge Thomas's background as a person who worked hard to raise himself from poverty would make him more sensitive, and less indifferent, to the problems of those people in our country who are still struggling for their fair share of the American dream. I hoped that in his past Judge Thomas had harbored more progressive views than those reflected in his writings and statements. But I was concerned, based on his writings and statements, that he had forgotten his background, or that his success had made him callous to people who have not enjoyed the same success. I had hoped that the hearings would clear up my doubts about his philosophy.

But after five days of his testimony, I am disappointed that the record is not clearer. Rather, as Senator Heflin said, the record is less clear. I am disturbed by the contradictions between his past statements and his testimony. These contradictions raise serious questions about Judge Thomas. They do not give me confidence in him. If he was attracted to radical ideas in the past, it is likely that he will be attracted to these ideas in the future. If he has been indifferent in past, it is likely that he will be indifferent on the Court.

We have seen two Clarence Thomases. The old Clarence Thomas showed insensitivity and indifference to others less fortunate than himself. The old Clarence Thomas expressed approval for radical legal theories. The new Clarence Thomas uses his personal story to shield himself from his past statement and writings. The new Clarence Thomas uses the right words, but does he mean them? We don't know.

The Judge Thomas I see is a philosophical chameleon. He spoke and wrote favorably of extreme legal theories to win the approval of the radical-conservative community in hopes of obtaining a Supreme Court nomination. Now, with the nomination in hand, he tries to jettison these past statements to win confirmation. Like a chameleon, which changes color to match the surrounding environment, Judge Thomas has changed his philosophy to gain the approval he needs. Are we voting for the old Clarence Thomas, or the new Clarence Thomas? His testimony provides no answers.

My children will live most of their lives under a Supreme Court with Judge Thomas sitting as a justice. Can I trust this man to be thoughtful and fair-minded in making decisions that will affect my children's lives, and the lives of millions of other Americans of my children's generation? I cannot. I am afraid that Judge Thomas's testimony has not overcome my doubts or earned by trust. Instead, his testimony has increased my doubts and weakened my trust.

This experience has revealed the weaknesses in the confirmation process. Negative politics—with all its cheap shots and character attacks—has spilled over to stain the process of confirming Supreme Court nominees. All the parties involved share blame for this development. The Senate, however, should make no apologies for conducting thorough hearings into Judge Thomas's background and philosophy. As one of my colleagues said, five days of hearings is a small price to pay for the right to serve on the Supreme Court for 40 years. Because of the power justices hold, their nominations deserve the highest level of scrutiny.

The President, however, has used this process in his campaign to divide the American people. Sadly, he seeks to irritate the wounds in our society rather than to heal them. The President's aides used a strategy to shield Judge Thomas from our scrutiny. I believe this strategy was unfortunate because it hurt Clarence Thomas. We were kept from knowing the real Clarence Thomas. Because we were denied the opportunity to see the real Clarence Thomas, there are lingering questions about his character and his intellect. But most important, there are too many unanswered questions about his philosophy. These unanswered questions leave too many serious doubts in mind. Because of these doubts, I cannot vote to put Judge Thomas on the Supreme Court.

Mr. PRYOR. Mr. President, my opposition to Clarence Thomas predates Ms. Hill's allegations and even predates his nomination to the Supreme Court. I was one of only two Senators to oppose Clarence Thomas' nomination to the D.C. Circuit Court of Appeals in 1990. At the conclusion of my remarks I will insert into the RECORD two statements I made in 1990, which explained my opposition to Clarence Thomas' nomination to the D.C. Circuit Court. At the time, I felt Mr. Thomas' tenure as head of the EEOC, during which as many as 13,000 age discrimination cases were allowed to lapse, raised serious questions about his qualifications for higher office. Nothing since then has changed my mind about that.

Relative to the recent allegations of harassment and misconduct by Judge Thomas, I personally found the hearings to be inconclusive. I am sorry that today's vote will be interpreted by many as a referendum on whether we believe Judge Thomas or Prof. Anita Hill. This is not the case and my decision on this nominee was made several days before the charges against Judge Thomas surfaced.

I am proud to have cast votes in recent years in favor of Justices O'Connor, Scalia, Kennedy, and Souter, all of whom were nominated by Republican Presidents and widely considered to be conservative of philosophy. In my opinion, these were individuals who unite the country rather than divide it. Such is not the case with Judge Thomas.

I ask unanimous consent that the statements to which I referred be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

[From the Congressional Record, February 22, 1990]

NOMINATION OF CLARENCE THOMAS

Mr. PRYOR. Mr. President, on February 6, the Senate Judiciary Committee held a confirmation hearing on the nomination of Clarence Thomas as a U.S. circuit judge for the District of Columbia Circuit. During this hearing, a number of statements were made by Mr. Thomas that I find troubling.

Before I outline my concerns, I would like to acknowledge that there is much to admire and respect about Clarence Thomas. He is truly a self-made man, having advanced from very humble beginnings to Chairman of the Equal Employment Opportunity Commission [EEOC]. Along the way he attended law school at Yale University, served as assistant attorney general for the State of Missouri, and was appointed Assistant Secretary for Civil Rights at the U.S. Department of Education. These are significant achievements that should be taken into account when considering Mr. Thomas' fitness to serve on what is often described as the second most important court in the land.

What must be taken as an equally important indication of Mr. Thomas' ability to serve effectively on the District of Columbia Circuit, however, is his track record in his most recent position as Chairman of the EEOC. In that vein, I would like to take this opportunity to briefly explain my understanding of his performance in that capacity.

As chairman of the Senate Special Committee on Aging, I am particularly concerned about, and committed to, strong and effective enforcement of the Age Discrimination in Employment Act [ADEA]. With this in mind, I was dismayed to learn about several erroneous statements made by Chairman Thomas and his supporters regarding his role in enforcing ADEA.

At the hearing Mr. Thomas was praised by some for his 8-year tenure in which he took the EEOC "in shambles" and eliminated the case backlog, installed a new computer system for tracking cases, and managed the Commission's funds more wisely. Such comments give the impression that Clarence Thomas saved the EEOC from certain demise. I believe that the several thousand age discrimination claimants who, during Chairman Thomas' watch, lost their rights largely due to EEOC neglect and mismanagement would differ with this rosecolored view of the past 8 years.

According to documents obtained by the staff of the Special Committee on Aging during an investigation of the EEOC by former Chairman John Melcher, the EEOC's inventory backlog of 33,000 in 1982 rose to over 61,000 in 1987. During that same period, the number of unprocessed charges 300 days old or older increased some 2,200 percent, from 727 to 15,428. Therefore, far from eliminating its backlog, the EEOC was actually adding to it.

In addition, words of praise for Chairman Thomas for modernization of the EEOC must be taken with a grain of salt. The Aging Committee's investigation of EEOC found evidence that during Chairman Thomas' tenure the Commission spent millions of dollars in a highly unreliable computer system that eventually had to be replaced. Only recently has the EEOC's new Charge Data System begun to function properly and provide a reliable national data base.

Mr. Thomas' performance under questioning by members of the Judiciary Committee regarding EEOC's enforcement of the ADEA raised a number of concerns. Many of his responses appeared to be shaky attempts at revisionist history. Under questioning from Senator HATCH, Mr. Thomas stated that the EEOC had at one time allowed the statute of limitations for filing a case in Federal court lapse on 900 ADEA cases. He claimed, however, that the situation has been corrected and that lapses are now down to two cases a year.

These numbers are totally inaccurate and, some would say, border on misrepresentation. In fact, the EEOC's own figures indicate that the statute of limitations may have lapsed on well over 13,000 ADEA claims from 1984 to 1988. Additionally, over 1,500 charges contracted out by the EEOC to State Fair Employment Practice Agencies [FEPA's] have been allowed to expire since 1988.

In 1987 Chairman Melcher, acting on a number of complaints, began an investigation into ADEA claims that the EEOC had allowed to lapse. In early September, Chairman Melcher requested that the EEOC provide him with information on how many ADEA cases had exceeded the 2-year statute of limitations. Although an internal survey of district offices showed that the EEOC had let at least 900 ADEA charges lapse, Mr. Thomas chose to redefine cases as charges which had been recommended for litigation, and he told the Aging Committee that 70 such cases had expired.

After months of fruitless attempts to obtain additional and accurate information on this matter, the Aging Committee issued a February 1988 subpoena to Chairman Thomas to provide data on the lapsed charges. Thomas reported that form 1984 to 1987, 779 charges had exceeded the statute of limitations. Two weeks later Thomas received an internal EEOC report indicating that 1,200 charges had expired in 1987 alone.

Later in 1988, Congress passed the Age Discrimination Claims Assistance Act [ADCAA], which extended the statute of limitations 18 months for charges which were filed on or after January 1, 1984 and which expired on or before April 7, 1988. In complying with reporting requirements under ADCAA, the EEOC has admitted that it has mailed out more than 13,000 notices to older workers whose claims may have been allowed to expire during that period.

As mentioned, Mr. Thomas proclaimed to the Judiciary Committee that the problem of lapsed ADEA charges has been corrected and that lapses are now running about 2 a year. In fact, EEOC documents submitted to the Judiciary Committee show that over 1,500 ADEA charges contracted out by the Commission to State FEPA's for investigation have lapsed since ADCAA.

Mr. Thomas' response when confronted by Senator METZENBAUM with this fact was twofold. He initially stated that the EEOC has no control over the FEPA's. He further responded by stating that the ADEA statute of limitations did not matter on those charges because they were filed under State antidiscrimination laws, which have no such limitations. These statements are certainly misleading, and raise serious questions about the nominee's appropriateness for the Federal bench.

The EEOC contracts with FEPA's to investigate a range of employment discrimination cases filed at the State level. While it is true that age discrimination charges lodged with FEPA's are filed under State antidiscrimination laws, they also represent claims under the ADEA. Indeed, EEOC regulations make it clear that charges filed with FEPA's under contract are considered to be filed with the EEOC also.

As the Federal entity charged with the enforcement of the ADEA, the EEOC has an inescapable duty to protect the rights of ADEA claimants. The fact that a lapsed charge may still be valid under State law does not relieve the Commission of its fundamental responsibility.

The contracts between the EEOC and FEPA's require that a charge be investigated and sent to the EEOC within 18 months of the date the charge is filed. This is intended to give the EEOC time before the expiration of the 2 year statute of limitations to make a decision on litigating the charge or issuing a no cause letter to the claimant. If FEPA's violate this time frame, they don't get paid. In addition, the EEOC can discontinue its relationship with poorly performing FEPA's. Most importantly, with its new computer system, the EEOC has the ability to track charges filed with FEPA's, and has the contractual right to take from the State agencies those charges found to be in danger of lapsing.

In conclusion, there should be little dispute that thousands of ADEA claimants have unfairly and unacceptably lost their rights during Chairman Thomas' 8-year tenure. We all agree that the massive lapses of ADEA charges prior to 1988 should have never happened. Likewise, we must recognize the tragedy and irony that even as Congress was acting to restore the rights of those who lose claims during that period, hundreds more cases were lapsing.

Mr. President, the qualifications and experiences of any person nominated to fill such an important post as a judgeship on the D.C. Circuit must be closely scrutinized. There are few things I respect more than an individual who has made a success of him or herself in the face of hardships. Indeed, Mr. Thomas' accomplishments are to be applauded; however, the concerns I have outlined above should not be dismissed as irrelevant to the confirmation process.

I have not decided how I will vote on Mr. Thomas' nomination; however, I will make my decision based on the scope of my knowledge about the nominee and his qualifications. It is my hope that all my colleagues will do the same. I look forward to reviewing the Senate Judiciary's report and recommendation on Mr. Thomas, as well as to any discussion which may occur on the floor regarding his nomination.

[From the Congressional Record, March 5, 1990]

Mr. PRYOR. Mr. President, those who are managing this particular nomination should be on notice that my speech should not take more than about 4 minutes maximum.

Mr. President, this nominee's fate, I believe has already been determined. There is no question about that. My vote against this nominee will not change the fact, and certainly I do not expect it to, that Clarence Thomas will be confirmed by this body as U.S. circuit judge for the D.C. Circuit. Frankly, I wish him nothing but the very best as he takes on this new challenge.

On February 22, I outlined to my colleagues in the Senate not only my admiration for, but also my doubts regarding, Mr. Thomas. I see no need to repeat them at great length today. Whether through mismanagement or through disdain for the Age Discrimination in Employment Act [ADEA] Clarence Thomas, as Chairman of the Equal Employment Opportunity Commission [EEOC] for the past 8 years, has been responsible for allowing thousands of age discrimination claims to lapse the statute of limitations.

From 1984 through 1988, as many as 13,000 ADEA claimants may have lost their rights to bring suit in Federal court. Since that time over 1,500 additional age discrimination claims have been allowed to lapse. Throughout congressional investigation into these lapses, Mr. Thomas has vigorously resisted oversight, and he has consistently, whether he knew it or not, misstated his record as chairman of the EEOC.

In 1988, Mr. Thomas was very, very uncooperative to the extent that former Senate Aging Committee Chairman John Melcher was forced to issue subpoenas to the EEOC in order to discover that Mr. Thomas had substantially understated the number of lapsed ADEA claims to the committee. But chairman Melcher's experience with this nominee was not unique. On July 18, 1989, the chairperson of 12 separate House committees and subcommittees with jurisdiction over the EEOC wrote to the President expressing the same frustrations, and urging that Mr. Thomas not be nominated for this judgeship.

As I stated to my colleagues in the Senate on February 22, I feel that the nominee has once again been far less than candid with a congressional committee—in this instance the Senate Judiciary Committee—regarding his record as Chairman of the EEOC. I am also astonished by his apparent lack of knowledge regarding the EEOC's contractual relationships with State fair employment practices agencies [FEPA's]. Hundreds of ADEA charges contracted out by the EEOC to the FEPA's on the local level have lapsed since 1988, and Mr. Thomas flatly denies any responsibility for them. I hope that my colleagues will refer to my previous statement when I attempted to straighten out the record for a more thorough discussion of the FEPA issue.

After much careful consideration, Mr. President, I have determined that I have significant and unanswered concerns regarding this nominee's sensitivity to the rights of older individuals and his commitment to protecting those very particular and specific rights.

Mr. President, strong and fair enforcement of the ADEA is just as important as enforcement of any other law that protects our citizens from discrimination. As Senators, we must have confidence that the judges we confirm to fill what is often described as the second most important court in the land will uphold the laws that embody the rights of those most vulnerable in our country and in our society.

Based upon his record as the Chairman of the EEOC, I cannot say that Mr. Thomas has given me that degree of confidence that I need to vote for his confirmation. I am not trying to enlist support against his nomination. But, in my capacity as chairman of the Senate Special Committee on Aging, I cannot ignore my concerns about Mr. Thomas in this area and, as a result, I will not vote for his confirmation.

If my vote on the Thomas nomination can achieve only one outcome, Mr. President, it is my hope that it signals that enforcement of the ADEA must be a high priority. I am pleased to say that I believe that the new Chairman of the EEOC, Evan Kemp, shares my commitment in protecting the rights of older citizens. It is therefore with great hope and expectation that I look forward to an improved and productive relationship with the EEOC. It is also to my great sorrow that I cannot support the nomination of Clarence Thomas to this particular position.

Mr. President. I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized?

The Chair recognizes the Senator from Missouri [Mr. Danforth] for not more than 6 minutes.

Mr. DANFORTH. Mr. President, I agree with the Senator from Arkansas only insofar as he expresses regret for the position he has taken.

I have stated previously this afternoon that I do not know either the law or the facts relating to these cases dealing with the aging. I do know that I was present in the Judiciary Committee when Clarence Thomas assumed the responsibility personally for everything that happened on his watch, including these cases. I can say to the Senator from Arkansas that, having known Clarence Thomas for 16 years in a collegial capacity, both when I was State attorney general and as a Senator, Clarence Thomas is a totally candid person. What you see is what you get. He is not going to pull a fast one on anyone. As a matter of fact, one of the real characteristics of Clarence Thomas is that he will tell you or me or anybody else exactly what he thinks at any time. I have no doubt that there was no effort on his part to pull the wool over anybody's eyes.

It is well known, I think, that when Senator Melcher was chairman of the Aging Committee there was a very severe difference of opinion—it may have even been a difference of personality—between Senator Melcher and Clarence Thomas. I know on numerous occasions Clarence Thomas expressed concern about this to me because I consider myself to be his personal friend. But one thing he does not do, I am sure has not done, and I know will not do—I will be surprised if he does it as a Federal appellate judge—is to somehow twist or tailor the law in order to meet some personal agenda of his own. He would not do that.

If the statute of limitations ran, it was from some fault of the system. It was not some conniving trick designed to accomplish some weird personal agenda which was then covered up in some dastardly fashion by Clarence Thomas. That is just not the way the man works.

I think some people might say, well, if he is a judge he will not engage in new frontiers of social policymaking from the bench. Undoubtedly that is the case. He is a person who is a believer in the concept of restraint. But he is also a person who believes in enforcing the law. I am confident, knowing the person as well as I do, that that is exactly what he attempted to do as Chairman of the EEOC, and that is exactly what he would attempt to do on the court of appeals.

Mr. President, I yield back whatever remaining time I might have.

The PRESIDING OFFICER. Who wishes to be recognized?

Mr. PRYOR. Mr. President, I wonder if it might be permissible for me to respond to the distinguished Senator from Missouri for not to exceed 5 minutes?

The PRESIDING OFFICER. The Senator is recognized.

Mr. PRYOR. Mr. President, there is no one in this body that I have greater admiration for than the great Senator from Missouri, my friend, Mr. Danforth. And I know Senator Danforth has had an extremely personal relationship with the nominee for a number of years. I know he knows the nominee well; in fact, much better than I do.

Mr. President, I say this out of great respect to the Senator from Missouri and out of all respect to the distinguished career of the nominee in this case, Mr. Clarence Thomas. What I think happened at EEOC during the past 8 years is that rather than Clarence Thomas, the director, running the bureaucracy, the bureaucracy ran him. I think the bureaucracy ran him to a very dangerous extent, so that Clarence Thomas decided no longer to look at what was happening in that agency.

This is not the first time this has happened in a bureaucracy. It happens many times. All of us in this body have seen bureaucracies or agencies or entities of government being taken over by those who are not in command. We also see what we might call the tail wagging the dog.

Clarence Thomas is not a bad man. In fact, he is a good man. His intentions are not bad. In fact, his intentions are good. But he allowed this to happen, and it happened on his watch. As a result, for some 15,000 individual Americans who had age discrimination claims, appealing to the court of first resort, the EEOC, those claims might as well have been sent to Beijing. They might as well have been sent to Bulgaria or Romania. But they were filed in the court of first resort, EEOC.

What happened to them? The statute of limitations was allowed to run. Had it been 10 cases or 20 cases, that might have been something different. But there were 15,000 charges which may have lapsed, Mr. President. These 15,000 charges representing the rights of American citizens were denied and snuffed out, literally snuffed out, by a bureaucracy that was run by Clarence Thomas.

That is too much for me to overlook. I cannot say, well, he was a good man, but I am sorry he did not do better and I will vote for him.

In this case, the instances were too many, the warnings were too often, and the consequences were too great for me to have that degree of confidence to promote this fine man to the job for which he is being considered.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who wishes to be recognized? The Senator from Ohio has 2 minutes.

Mr. METZENBAUM. Mr. President, I commend the Senator from Arkansas for so succinctly stating the facts concerning the operation of EEOC under Chairman Thomas. I think his remarks very much indicate the reason that the National Council on Aging came out in opposition to Mr. Thomas' confirmation, and I think it is the reason that the AARP wrote a 15-page letter. They take no position, but make it very clear about their unhappiness with respect to his conduct as Chairman of the EEOC.

I think his remarks also support and make us understand better why 10 chairs of various House committees came out against confirmation of Mr. Thomas. I think his remarks help us to understand also why 19 members of the Congressional Black Caucus came out in opposition, and not one member of the Black Caucus came out in support of Mr. Thomas' confirmation.

So I think Mr. President, although I said earlier I expect that Judge Thomas will be confirmed, there are some strong and persuasive reasons why he should not be confirmed and seated as a member of the Circuit Court of Appeals.

Mr. KOHL. Mr. President, I will vote to confirm Mr. Clarence Thomas to the U.S. Court of Appeals for the D.C. Circuit. I am concerned about this nomination, however, for some of the reasons outlined by Senator Metzenbaum, and organizations representing elderly Americans—namely, that Mr. Thomas did not zealously protect the rights of a vulnerable segment of our society when he was head of the EEOC. I also have some concerns that Mr. Thomas' strong ideology could interfere with his performance as a judge.

Still, Mr. Thomas has been nominated to the bench—not to the EEOC again—so any managerial mistakes are not a bar. Moreover, he repeatedly assured us during the Judiciary Committee hearing that he would put aside his own political believes and be an impartial judge. I take him at his word. He also very clearly vowed to follow Supreme Court precedent even if he disagrees with it. This, too, was reassuring.

Consequently, Mr. President, I am going to vote in favor of Mr. Thomas. For this position on the D.C. Circuit—where he must follow Supreme Court precedent—he is qualified and deserving of confirmation.

Mr. WOFFORD. Mr. President, this has been a painful week for Judge Clarence Thomas, for Prof. Anita Hill, for their families and friends, colleagues and classmates, and also for the country. No one can be happy about the spectacle of seeing such accomplished and impressive individuals put in the hot glare of public scrutiny over the details of their private lives.

As a former aide to Dr. Martin Luther King, Jr., civil rights adviser to President Kennedy, Notre Dame law professor, and president of a leading women's college, I've had special feelings for the powerful and conflicting passions aroused by this nomination.

I want an African-American to be on the Supreme Court because issues of equal opportunity for minorities will remain a vital concern for the highest court in our land. President Bush did reach out to a black American, but he did not select someone in the tradition of Justice Thurgood Marshall. The President selected, as he has done with almost every judicial nomination, someone who reflects his own political and legal agenda.

I have been especially disappointed to witness a nomination and confirmation process which, from the very outset, elevated politics over qualifications.

After the first hearings in September, I was concerned that Judge Thomas—a man who has clearly wrestled with many legal, philosophical and moral questions—steadfastly refused to clarify and defend his views on several key issues. A Supreme Court nominee can be more forthcoming without prejudging particular cases that may come before the Court.

In addition, I remain concerned that as a person who has spent the bulk of his career in administrative and bureaucratic posts, Clarence Thomas does not have the courtroom experience and constitutional expertise that we should expect in the Justice who replaces Thurgood Marshall.

Like most Americans, I was deeply impressed by the facts of Judge Thomas' successful struggle against a legacy of racial discrimination and poverty. But as Congressman JOHN LEWIS, my colleague of many years in the field of civil rights put it in his testimony, these facts do not make a sufficient case for a lifetime appointment on the Nation's highest court.

Unlike Senators and Members of Congress who must return to the people periodically for their mandate, Supreme

Court Justices do not. Lifetime appointments demand the highest level of experience and qualifications, as Justice Marshall demonstrated so well.

Therefore, after reviewing the public record and soliciting the thoughts of my constituents in Pennsylvania, I have decided to vote against this nomination.

Mr. LAUTENBERG. Mr. President, the Senate is about to exercise one of its most important duties in voting to confirm or reject a candidate for the U.S. Supreme Court. A confirmation of a nominee can have a lasting impact on our citizens' lives, their freedoms, and their access to justice.

Shortly after the Senate Judiciary Committee vote more than 2 weeks ago to report the nomination of Judge Clarence Thomas, I stated my intention to vote against the nomination on the basis of the judge's record and views on constitutional rights.

Judge Thomas is clearly an extremely intelligent man. A man who overcame marked disadvantages to achieve significant educational and professional accomplishments. However, I did not feel that Judge Thomas would be a dependable guardian of the fundamental rights Americans have come to expect. I did not feel he viewed the Constitution as a dynamic document, that must grow with our society over time.

I have not changed my views. I believe Judge Thomas would apply a strict, cramped interpretation of our Constitution. I remain concerned that Judge Thomas would challenge, instead of support, a modern understanding of liberty. As I said then, I feared he would be two more hands on the rope pulling us backward. I still feel that way and I will vote against his confirmation.

Mr. President, to earn confirmation by the Senate, a nominee should meet the highest personal and professional standards. In judging a candidate, principal questions include: Is the person learned and experienced in the law? Will the nominee approach the interpretation and application of our laws with the appropriate dedication to our Constitution, its values, and the protection of our freedoms? Does the person have the integrity, the character, and the temperament, to serve on the highest court?

This nomination comes before the Senate at a time of major change on the Court, a change I do not welcome. Presidents Reagan and Bush have sought to impose a lasting stamp on the Court which will result in the loss of liberties and freedoms that Americans have come to take for granted. I fear the cumulative effects of these appointments will restrict our constitutional rights in a fundamental and deleterious way.

So, Mr. President, I have not changed my mind on this confirmation vote. I will vote against Judge Thomas' nomination to the Supreme Court.

However, I would like to make some observations about what was transpired in the Senate over the past days and weeks.

It has been a difficult time for the Senate and for the country. Fundamental questions about integrity, racism, sexism, character, and justice have been raised. Many of my constituents, along with many Americans, have been outraged about the manner in which this controversy developed:

Outraged that serious and credible charges of sexual harassment were not investigated earlier and that the Senate almost went to a vote on the nomination without considering them;

Outraged at the apparent inability of Members of the Senate to understand what a woman goes through who has been subjected to sexual harassment;

Outraged that Senate rules were broken and that confidential documents were leaked to the press in a manner that was unfair to both Professor Hill and Judge Thomas;

Outraged that one or both of these individuals were subjected to a public pillorying, which demeaned both of them and, some feel, the Senate and the entire confirmation process.

Mr. President, this has been an extraordinary ordeal. It was uncomfortable. It was excruciating at times. A significant segment of the public seems repulsed by it. I can understand that and it is a matter we need to review.

But, Mr. President, stepping back from the discomfort of the weekend, we must remember that the Senate had a duty to investigate a serious, credible charge that was directly relevant to Judge Thomas' fitness to serve on the Court.

How else we could have done it, I am not sure. If it had been done in private, the public would have been robbed of its ability to make a judgment about this matter, which has been of enormous interest to many Americans. Many would have charged the Senate with a cover up. So, it's a complicated question how we should have undertaken this investigation, or what we should do in the future, but review it we must to search out the culprits, if any, who were responsible for leakage of any privileged documents.

What is clear, however, Mr. President, is that the Senate had an absolute responsibility to investigate Professor Hill's charges. What is clear, is that too many women in this country suffer the searing indignity and abuse of sexual harassment, mostly in silence. What is clear is that the overwhelming majority of women who suffer sexual harassment never take action against those who harass them, much less tell their stories beyond a close circle of friends.

They suffer in silence, because they fear the ramifications to their careers, to their ability to make a living, if they try to challenge supervisors or others in a position to harm them professionally.

Mr. President, to me it is these realities of harassment in the workplace that many Senators seem unable to comprehend. In seeking to attack Professor Hill's credibility, and buttress support for the Thomas nomination, Senators have questioned her actions. They ask why she did not come forward. Why she did not leave her job. Why she did not cut off all ties to Judge Thomas. Why she did not take action. Why she waited 10 years.

To me, Mr. President, these questions are a powerful reflection of the ability of influential men to intimidate and harass women in the workplace.

Let us forget Clarence Thomas and Anita Hill for the moment. Just picture this. You are 25 years old. You are just starting your career. You are a black woman, the first in your family to earn an advanced degree. You have ambitions. You have goals. You have things you want to accomplish for yourself, your people, your country. You view your job as a major step along a career path.

Suddenly, you are faced with inappropriate and unwanted behavior by your boss, your mentor, the employer who gave you your first chance and holds your future in his hands. He expresses interest in you. You indicate you are not interested. He persists, getting more offensive. You do not want to leave your job. You do not think you can possibly challenge him publicly. All you can see are problems—problems if you try to keep your job by bringing a charge of sexual harassment and problems if you do nothing. All you want is to keep your job and for the behavior to stop.

I can understand that perfectly, Mr. President. I understand it clearly. Many men in this country are also treated in an offensive and demeaning manner by their bosses, but they do not leave their jobs, as the chairman of the Judiciary Committee pointed out. They do not insult their bosses publicly, or appeal their behavior to a higher supervisor. Why not? Because they need their job. They need their paycheck. So, they put up with it and do the best they can to perform their jobs and advance forward in their company. We all understand that. So, why the blind spot when it comes to sexual harassment?

Mr. President, I feel strongly on that issue. I think the Senate and the country received a startling education on what women have suffered through in the workplace. I hope it will make a difference in the future.

Mr. President, to me Professor Hill was persuasive. She was credible. She was dignified in the face of persistent attacks on her character and motives. And it is not implausible to me that

she did not come forward before this time publicly, or that she maintained professional contacts with Judge Thomas. As one witness said, Judge Thomas was the most powerful boss Anita Hill ever had and was still in a position of power in the years after she left his employ. It would have been a costly bridge to burn. All Ms. Hill wanted, this witness stated, was for the behavior to stop.

I do not know why Professor Hill would have put herself through the pain of the last few weeks, and invite the scars she will suffer from for the rest of her life, if she were not speaking the truth. She had nothing to gain, except to provide the Senate and the public with important and relevant information about a person who seeks confirmation to the Court. But she had much to lose—her privacy, her reputation, and her peace of mind.

We should remember, Mr. President, that Professor Hill was an unwilling witness. She did not come forward until questioned by representatives of the Senate and by the FBI. At that point, she felt it was her duty as a citizen to come forward with information that was directly relevant to Judge Thomas' fitness to serve on the Supreme Court. She felt she should not lie or stay silent, having been approached by law enforcement officials.

At points during the proceedings it was suggested that Professor Hill's charges were a last minute, October surprise—an effort to derail the Thomas nomination for political reasons. But, testimony before the committee tells us otherwise.

A distinguished panel of witnesses, each of whom came forward voluntarily, recounted under oath that Professor Hill shared the painful realities of sexual harassment with them years ago, when she would have had no such motives, nor any expectation that these private conversations would become relevant to a Supreme Court nomination.

Mr. President, the Senate will vote tonight on this nomination. The rest will be for history to decide. If Judge Thomas is confirmed as a Supreme Court Justice, I hope this experience will deepen his sensitivities about issues of discrimination, race, sexism, and fairness.

Mr. MCCAIN. Mr. President, the recent controversy over the allegations made against president Bush's nominee to the Supreme Court of the United States, Judge Clarence Thomas, has caused a furor over an individual who has, in every respect, demonstrated an exemplary ability to serve as an honorable, sensitive, hard-working, and fiercely independent jurist.

The allegation of sexual harassment is extremely serious. Sexual harassment in the workplace, and elsewhere, must not be tolerated under any circumstances. Such harassment is threatening, demeaning, and utterly reprehensive. For this reason, we have administrative and legal remedies available for the purposes of punishing those who are proven guilty of this transgression.

I monitored the 3 days of hearings on these allegations very closely. I paid very close attention to the witness' testimony. I also paid close attention to the testimony of the nominee, and I hope that the other Members of the Senate, and the Nation, did so as well.

Judge Thomas flatly denied the allegations made against him. His accuser repeated the allegations, but was unable to prove their veracity. I believe that the burden of proof remained with the accuser, as occurs in all other proceedings. Instead, the proceeding was conducted in such a manner that the burden of proof fell upon the accused.

That is not the premise upon which our society is based. These hearings were supposed to be neither a judicial proceeding, nor an adversarial proceeding. Yet, they were nothing short of a trial, a trial where none of the legal evidentiary standards applied, and a trial where the burden of proof fell on the nominee to disprove the charges.

The presumption of guilt is unjust, and the statements made in relation to the allegations, without proof, are unjust.

Less than 2 weeks ago, I expressed my support for the nomination of Judge Thomas to the Supreme Court before the full Senate, and I reiterate my unwavering support today.

Since his nomination, the American people have gotten to know the story of a man who was raised with little material benefits, but was rich with the love and encouragement of family, and the dedication of teachers. Above all, Judge Thomas was raised with the belief that hard work brings its own rewards. His career stands as testimony to the truth behind this principle.

I have been, and continue to be, a strong supporter of Clarence Thomas' nomination. I say this with great pride and without reluctance. The hearings over the weekend served to emphasize Judge Thomas' integrity as a jurist, and the overwhelming loyalty demonstrated by the vast majority of his colleagues and former employees.

This is the kind of jurist who will serve the people of this country with fairness, sensitivity, and intellectual fortitude. This is the jurist that I will vote to confirm to serve on the Supreme Court of the United States.

Mr. HARKIN. Mr. President, I rise to again express my opposition to the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

On September 26, I stood on the floor to announce my opposition to this nomination. I oppose this nominee based on Judge Thomas's failure to affirm his unequivocal support for individual rights, especially the fundamental right to privacy. I oppose this nominee because he failed to articulate a coherent understanding of the Constitution, which we should expect from a prospective Supreme Court Justice. And I oppose this nominee because I cannot believe his statement that he never discussed Roe versus Wade in any but the most general sense, and has no opinion at all in this case.

Prof. Anita Hill's allegations and Judge Thomas' performance at the hearings over the weekend have only deepened my doubts about Judge Thomas. Enough has been said about the question of who was or was not telling the truth during the Clarence Thomas hearings. I do not intend to add to the record on that score. Many have criticized the process of confirmation of judges by this body and some of that criticism may be justified. I think that it is safe to say that most people will not regard these hearings as the Senate's finest hour.

Several points must be made before we vote. First, the issue of sexual harassment in the workplace has now been placed squarely on the American agenda as a result of these hearings. That is a very good result, although inadvertent, from the confirmation process. Sexual discrimination and sexual harassment are deeply pervasive problems in the American workplace. This is a problem that leaves over one-half of our work force feeling empty and second class. It is time that we face up to this problem forthrightly and deal with it once and for all.

Out of this dialog, challenges emerge for all of us. In the Senate, all of us, as individual employers, should reexamine our own attitudes and practices to ensure that none of what was alleged in the hearings occurs within these halls. And, further, I challenge the men of America to take time to examine their attitudes about their female coworkers to determine whether they are contributing to this serious problem.

This is 1991. It is deeply troubling that we should even have to address this problem. But it is there and we must put an end to it. All of us here assembled have mothers. Many of us have wives, daughters and sisters. Let us think about them and the kind of working world they have had to face, and the kind of working world we would want them to face. There is no place in the working world of today and beyond for sexual harassment and sexual discrimination.

The second challenge goes out to George Bush and the Republicans. I challenge you to stop playing a cynical and dishonest game with judicial appointments by sending barely or unqualified candidates to us for confirmation. Mr. Bush and the American people know that Clarence Thomas is not the best qualified candidate to be a Supreme Court Justice.

My final challenge goes to the American public. We might not be in this situation today, and not have experienced the agony of these hearings, if the Senate had more women Members, if the House of Representatives had more women Members, if there were more women judges, more women in the executive branch, more women officials at all levels of government. To more effectively handle problems like these, and hopefully end them, the views of all Americans, men and women alike, need to be better represented. And that will happen only when there are more women representatives in government.

As we vividly saw over the weekend, both the nominee and Professor Hill have their reputations in the balance. Judge Thomas has a right to vindicate his name in the courts, if he should so desire. But our duty is not to either of them; it is instead to the reputation of the Supreme Court, and to the Constitution of our country. The benefit of the doubt does not rest with either the accused or the accuser in this case; it rests instead with the Constitution. As the Senator from Alabama, Senator HEFLIN, said when he announced his opposition to Judge Thomas: "When in doubt, don't!" For the protection of the Constitution, we should vote not to consent to this nomination.

Mr. President, I will therefore vote no on this nominee.

Mr. MACK. Mr. President, Clarence Thomas' courageous struggle to excel in life has impressed many of us. His allegiance to the ideas of economic freedom, self-reliance, and self-discipline provided him the inspiration for his journey. Determination instilled in him by his grandfather and his teachers, framed a value system repeatedly tested and challenged. Thomas' grandfather honed that determination constantly encouraging him to "work hard * * * and then * * * work harder, be self-reliant * * * be faithful to your vision of personal achievement * * *." Clarence Thomas has certainly been faithful to that vision, turning once distant and seemingly unreachable goals into a series of impressive accomplishments.

Clarence Thomas has provided all of us with a unique look at the opportunities which should be afforded to all Americans. His experiences demonstrate clearly that opportunities, while sometimes elusive, must be sought after with diligence and determination.

And yet, Mr. President, everything that Clarence Thomas has strived for, everything he believed about America being the land of opportunity, is in jeopardy. His reputation, his integrity, his moral being have been challenged.

Several weeks ago, I announced my support for Clarence Thomas. My decision was based upon his exemplary legal record as a lawyer and as a judge. When allegations of sexual harassment were charged against Judge Thomas, my initial reaction was shock and dismay—shock that an individual who I believe to be so highly regarded, was the subject of such serious allegations.

Over the past week, I have had the opportunity to give a great deal of thought to the allegations brought against Clarence Thomas. Like many people in this country, I was glued to the TV all weekend watching the hearings and judging for myself the circumstances surrounding this disturbing matter. After listening to the testimony of both Clarence Thomas and Anita Hill as well as the testimony of the other witnesses, I believe the evidence supports Clarence Thomas.

In our country, the accused is presumed innocent until proven guilty. The fact remains that Anita Hill produced no firsthand witnesses or evidence to support her claims. I found her story to be replete with inconsistencies and contradictions. Anita Hill, stated that she followed Clarence Thomas to the EEOC because she needed the job and was afraid she would lose her job at the Department of Education. This was after many humiliating and repulsive statements had been allegedly made by Clarence Thomas. First, the evidence shows that Anita Hill could have retained her job at the Department of Education and, indeed, could only have lost her job for cause. Anita Hill is a lawyer and should have known her employment rights. In addition, I found her statement that she needed the EEOC job because she could get no other job to be suspect. Anita Hill was a graduate of one of the country's top law schools and she had a reputation of being very competent. I cannot believe that Ms. Hill would have had any trouble finding a great job.

It is perplexing to me that Anita Hill waited over 10 years and four confirmations to bring up these allegations. She was working for the very agency charged with the responsibility of enforcing laws against sexual harassment, racism, or other unfair treatment. As a lawyer at the EEOC, Anita Hill should have been aware of the rights of individuals who wished to bring a sexual harassment complaint.

Even after leaving the EEOC, Anita Hill remained in contact with Clarence Thomas. She called him at least 11 times—a number of these calls being personal in nature. Anita Hill continued a personal relationship with Clarence Thomas who she claims degraded her and humiliated her. It just doesn't make sense.

It is difficult for me to put myself in the shoes of one who has been sexually harassed. This is why I took a great interest in the testimony of a number of females who had either worked for or with Judge Thomas. Each described Thomas in glowing terms. A number of these women had been sexually harassed while associated with other employers. In response to their own experiences of being sexually harassed, each of them described responses completely inconsistent with those of Anita Hill. One woman stated the following: "Let me assure you that the last thing I would ever have done is follow the man who did this to a new job, call him on the phone or voluntarily share the same airspace ever again." Another woman testified she found "Anita Hill's behavior inconsistent with these charges." Instead, this woman commented that the last thing she wanted to do "was to call either of the two men who had sexually harassed her to say hello or to see if they wanted to get together."

Clarence Thomas in no uncertain terms has categorically denied the sexual harassment claims. I know Clarence Thomas and I know him to be a man of outstanding character and of the highest integrity. I believe him and I support him.

Clarence Thomas represents in all of us the belief that we can achieve great things. Everything Clarence Thomas has worked for has been under the microscope of the Senate Judiciary Committee for several days now. This deliberate scrutiny has only confirmed my belief in who Clarence Thomas is and what Clarence Thomas stands for. Clarence Thomas' belief, like that of many Americans, is that an individual should determine one's destiny in life, not family roots or government quota programs. Given opportunities and the economic freedom to seize those opportunities, we as Americans can reap many benefits from our Nation.

The message Clarence Thomas brings to all Americans is not just applicable to the downtrodden and oppressed. People from all walks of life are affected by the principles of self-reliance and personal freedom which must be at the core of the Supreme Court's reasoning. By placing the responsibility for self-improvement and economic advancement upon each individual, we will also be allowing for the greatest possible degree of individual liberty.

Through Thomas' dedication to the ideals of values, hard work and self-discipline, Clarence Thomas has accomplished many personal achievements and has compiled an outstanding professional and legal record. Clarence Thomas will represent our country well on the U.S. Supreme Court, just as he has demonstrated his abilities in the past. In recognition of Clarence's outstanding efforts as Chairman of the EEOC, his employees named the EEOC headquarters building after him, dedicating the building to him as follows:

Clarence Thomas, Chairman of the U.S. Equal Employment Opportunity Commission, May 17, 1982–March 1990, is honored here by the Commission and its employees with this expression of our respect and profound appreciation for his dedicated leadership exemplified by his personal integrity

and unwavering commitment to freedom, justice, equality of opportunity and to the highest standards of Government service.

Clarence Thomas, in protecting our rights to achieve as individuals, will bring a breadth of experience to the Supreme Court. He will continue to stand for individual freedom and opportunity.

In closing, if these recent proceedings have done any good at all, it is that attention has been focused on the issue of sexual harassment. However, in this particular case, I believe the evidence strongly supports Judge Thomas and I remain steadfast in my support for him.

The VICE PRESIDENT. Under the previous order, the Republican leader is recognized from 5:30 to 5:45; the majority leader from 5:45 to 6.

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from California, Senator CRANSTON.

Mr. CRANSTON. Mr. President, I appreciate the minority leader's courtesy. I rose a bit ago seeking to correct the RECORD after the Senator from South Carolina had read an affidavit stating that one John Burke stated that Ms. Hill did not work at the level of her peers, nor at the level we expect, and that it would be in her best interest to seek employment elsewhere.

An attorney from the same firm has issued an affidavit stating that is not true.

Her performance was not held to be unsatisfactory by the Wald firm. She was not asked by the partnership to leave the firm.

He said:

I have been told that today a former partner in the Wald firm has stated that the Wald firm asked Ms. Hill to leave the firm because of her allegedly inadequate performance. This is not correct.

I will read the affidavit in full:

AFFIDAVIT OF DONALD H. GREEN

Donald H. Green, being first duly sworn, deposes and says: 1. I am a member of the bars of the District of Columbia, New York, and Florida. Upon graduation from Harvard Law School and after service in the United States Marine Corps, I served as an attorney with the United States Department of Justice. I have been a partner in the law firm of Pepper, Hamilton & Scheetz in Washington, D.C. since June 1987. For 21 years prior to that time, I was a partner in the law firm of Wald, Harkrader & Ross (the "Wald firm"), also in Washington, D.C.

2. Ms. Anita Hill was a summer associate at Wald, Harkrader & Ross in the summer of 1979. Based upon her performance that summer, she received an invitation to return to our firm as a full-time associate upon her graduation from Yale Law School in 1980. She accepted that invitation, and started with the Wald firm a few months after her graduation. Although I did not work directly with her, I knew her as an associate in the Wald firm.

3. One of my roles in the Wald firm at the time that Ms. Hill was with the firm was to serve as Chairman of the Associate Development Committee. This Committee's function, among others, was to evaluate associates' performance. The Committee monitored the professional progress of associates in the firm, prepared the evaluations of the associates for review at semi-annual partner meetings, reported on associate performance at the partner meetings, and met with associates individually to inform them of the partnership's collective evaluation after such partners' meetings. If the Wald firm partners decided that an associate should no longer be employed by the firm, or should be advised to look for a position elsewhere, it was the function of the Associate Development Committee to convey that message.

4. In the spring of 1981, the performance of Ms. Hill was routinely evaluated, along with all other associates. It is my recollection that her evaluation was typical of many of our starting associates. Her performance was not held to be unsatisfactory by the Wald firm. She was not asked by the partnership to leave the firm.

5. So far as I am aware, Ms. Hill left the Wald firm of her own volition, freely choosing an alternative professional path, which is not uncommon among young associates. I am aware of no pressure upon her to leave. I am confident that the Wald firm did not ask or press her to leave. Certainly, the Associate Development Committee, which I chaired, did not ask or press her to leave. That is my clear memory and I have recently contacted the other two members of the Committee and they confirm any recollection.

6. I have been told that today a former partner in the Wald firm has stated that the Wald firm asked Ms. Hill to leave the firm because of her allegedly inadequate performance. This is not correct. I have prepared and executed this affidavit, and submitted it to the Committee on the Judiciary of the United States Senate, because I believe it is important that the Committee and the Senate as a whole have the accurate facts about this matter.

The foregoing is true and correct to the best of my knowledge, information, and belief.

DONALD H. GREEN.

Subscribed and sworn to before me, a Notary Public of the District of Columbia, on this 14th day of October, 1991.—Deborah L. Kutch, Notary Public.

I want to add that this attorney, Donald Green, in the affidavit I am reading stated that he, not the other attorney, was the one that evaluated the work of people in that law firm.

The VICE PRESIDENT. The Republican leader is recognized.

Mr. DOLE. Mr. President, I have 14 minutes.

Mr. President, I want to indicate the Senate is not going to fall apart over this vote. There has been a lot of talk about the process, a lot of talk about the Senate, a lot of talk about perception about the Senate. Tomorrow we will be on something else. Some who were on opposite sides today will be on the same side tomorrow or next week. I wanted the RECORD to at last indicate that generally we try to accommodate one another here.

This is a very vital vote. It seems to me that we now have the votes, which I could not have said last Tuesday at this time. I indicated at that time there were about 41 "for" votes, 41 against Thomas, a pool of about 18 undecided. Some Senators said before they could vote for Thomas they would have to have a delay to check into these allegations.

I think that was the right decision from the standpoint of the future of Clarence Thomas. Had we not had the delay and had we had the vote last Tuesday, in my view his nomination would have been defeated.

It seems to me now there have been hardly any defections. So despite all the dramatic events of the weekend, as I look at my little score sheet and try to count votes, the pool we had last week is pretty much intact.

The Senator from West Virginia indicated he was voting "no," but he was not in the pool. Other Senators who indicated they were voting against Judge Thomas were not in the pool we were looking at as potential Thomas supporters.

So I would suggest that after all is said and done, all the drama and all the things that happened over the weekend—some of us watched every moment of the proceedings, except maybe 10, 15, or 20 minutes—it seems to me we are now in a position to make a judgment having had the delay, having had the additional information from Professor Hill, from Judge Thomas, and from supporting witnesses on each side.

It also seems to me it boils down to a question of credibility. This is not a referendum on sexual harassment. If it were a referendum of sexual harassment, the vote would probably be or should be 100 to 0. This is a referendum of Clarence Thomas and his nomination to the Supreme Court by President Bush.

We will have plenty of opportunities in the future to address the issue of sexual harassment in the workplace or any place else for that matter. I believe that you will find most Senators, regardless of party, regardless of philosophy, are going to be supporting the appropriate position in those cases.

We are back now where we were a week ago, when a majority of us, Republicans and Democrats, were prepared to say that Judge Thomas was qualified to be an Associate Justice of the Supreme Court. I guess the one question that I have is how much of a burden we placed on Clarence Thomas? How much of a burden will he carry for the next month, a year, 6 weeks, who knows how long, with the last-minute allegations fully aired to millions and millions and millions of Americans. And will it have a lasting impact when he reviews various kinds of cases, including cases of sexual harassment?

Mr. President, in my view this will make Judge Thomas even a better judge, a stronger judge, than earlier indicated. Having gone through another test of his strength and his character, in my view he is in a stronger position.

Let me also take time to pay tribute to my colleagues on the Senate Judiciary Committee. It was something they

did not ask for. We agreed on the delay and anybody could have objected by unanimous consent. And once we agreed on the delay we had a couple of courses to follow. We could have had executive committee hearings, could have called Judge Thomas and Professor Hill before an executive committee without staff, members only, without press. That might have been the preferable route to go. But once the decision was made by the distinguished chairman of the committee and the ranking member, Senator THURMOND, the Judiciary Committee, in my view, proceeded the only way they could.

And I commend the chairman of the committee, Senator BIDEN, the ranking Republican member, the leading Republican member, Senator THURMOND; and particularly thank my colleagues, Senator SPECTER and Senator HATCH who had the lead role on the Republican side on making the case for Clarence Thomas and looking at the credibility of Professor Hill.

Having said that, let me just suggest that in the final minute I have, I want to yield the last 5 minutes I have to the Senator from Missouri, Senator DANFORTH. I particularly thank Senator DANFORTH for his steadfastness and his loyalty. Around this town loyalty means a great deal. I am prepared to say on this floor, at this time, had it not been for the steadfastness and the intensity of Senator DANFORTH's support for Clarence Thomas, there might be a different outcome after the vote today.

At noon today the Republican Members paid tribute to Senator DANFORTH with a standing ovation, because of his stalwart support of someone he knows better than anyone else in this body. I would think a number of Members are prepared to take Senator DANFORTH's word if they have any doubt at this point.

Finally, I want to make one final point. I remember the eloquent statement by the chairman, Senator BIDEN, Saturday night when he said if there is any doubt, the benefit of the doubt should go to the nominee, Clarence Thomas. I would just ask my colleagues the three or four or five still undecided out there, maybe have not made up their minds, maybe will do this on the way to the floor, keep in mind that following the chairman's advice, if there is any doubt you give the benefit of the doubt to Clarence Thomas.

A great majority of the American people do not have any doubt, according to polls. The great majority of the people calling my office do not have any doubt. People from Kansas and/or places around the country are about 3 or 4 to 1 for Clarence Thomas. There is still some doubt, not much doubt. But I think we ought to give the benefit of the doubt to the nominee Clarence Thomas who for 107 days has been hanging out there twisting in the wind while every effort conceivable, every effort ever known to man was used to discredit him and defeat his nomination.

He has withstood the test. He is a stronger person because of it, and he will prevail, and he should prevail.

I urge my colleagues—if you still have not made up your mind, you are on your way to the floor, you are having one last thought about Clarence Thomas—give him the benefit of the doubt. He deserves that much and more.

Mr. President, I yield the remainder of my time to my friend and colleague from Missouri, Senator DANFORTH.

The VICE PRESIDENT. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, how much time do I have?

The VICE PRESIDENT. Six minutes.

Mr. DANFORTH. Mr. President, in those 6 minutes, I would like to make four brief points.

First, I would like to express my appreciation to so many people who have done an extraordinary job on behalf of this nomination, particularly the members of the Senate Judiciary Committee, particularly Chairman BIDEN, who, although he is on the other side of this vote, has been most fair and most diligent in pursuing his responsibilities as chairman; Senator THURMOND our ranking member; and especially the highly professional, extraordinary job done by Senator HATCH and Senator SPECTER, who on short notice prepared the case in favor of the nominee during the weekend session of the Judiciary Committee.

My second point, Mr. President, is that this is not a vote on the issue of sexual harassment or what to do about sexual harassment; 100 Members of the Senate are concerned about it. The visibility of the issue clearly has been raised.

But the way to fix the problem of sexual harassment is not to sacrifice up Clarence Thomas. The way to fix sexual harassment is to add remedies that do not now exist in the law for women who have been harassed and abused in the workplace. That is an issue which we will be facing when the civil rights bill comes to the floor of the Senate in the very near future.

Third, Mr. President, no one, no human being ever should have to go through what Clarence Thomas has gone through for the last 100-plus days, and particularly for the last 10 days. It is not right. It is terribly, terribly wrong.

It is not true that the ends justify the means. It is not true that any strategy is permissible in order to win a political point. It is not true that in order to further a political agenda it is all right to destroy a human being. That is not what our country is all about.

We have developed a legal system in America to protect individuals. It is not worth any political objective to destroy an individual. That is what was attempted with respect to Thomas nomination.

Clarence Thomas will survive because he is an enormously strong person of very deep religious faith. But many people could not have endured this. Many people's lives literally would be in jeopardy if forced to endure the kind of thing that Clarence Thomas went through.

We must get our acts together. We, meaning the Senate and the various interest groups and the staff people here in the Senate, cannot permit ourselves to go through this again. It is wrong. And the one healthy thing that is happening is that the American people are speaking out and they are saying that it is wrong.

Fourth, and finally, Mr. President, the one really heartening thing, I think, from the standpoint of Clarence Thomas, is the number of people who have known him for a very long time who have felt so deeply about this nomination. This has been the case ever since last July. People who knew him in Missouri, who worked with him in the attorney general's office; people like his friend Larry Thompson from Atlanta, GA, who came up here and spent time helping Clarence and working with him because they had known each other working at Monsanto in St. Louis; people like Janet Brown, and Nancy Altman, and Alan Moore, and so many others who had worked with him in high office here in Washington; people at the EEOC, black, white, physically disabled, with tears in their eyes supporting Clarence Thomas. That is the heartening thing.

One thing that happens in the nomination process is that the enemies of a nominee tend to portray the nominee as some kind of a monster, and the great way to offset that is for people who know the nominee to come forward. And that is what has happened with respect to Clarence Thomas, and it is very gratifying.

Mr. President, Clarence Thomas is going to surprise many people on the U.S. Supreme Court. He is going to be a good, competent, decent, and fair Justice. He is going to be the people's Justice on the U.S. Supreme Court. In my opinion, it is a great moment for our country to confirm the nomination of Clarence Thomas.

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader is recognized.

Mr. MITCHELL. Mr. President, and Members of the Senate, this year marks the 200th anniversary of the Bill of Rights, the most eloquent and compelling statement of the limits on government and the rights of individuals against the power of government ever devised, adopted, or enforced.

As elected officials, Members of the Senate are sworn to uphold the Constitution, of which those rights are an integral part. Ultimately, however, in our system it is the Supreme Court which is the arbiter of the Constitution. That is why one of our most important responsibilities is to advise and consent on those nominated by the President to serve on the Supreme Court.

It has been said often in recent weeks, including today, that a high level of controversy over Supreme Court nominees is new to our history. But that is not true. Nominations to the Supreme Court have often been contentious. In June 1968, the last time a Democratic President nominated someone to the Supreme Court, President Johnson nominated Associate Justice Fortas to be Chief Justice of the Supreme Court.

On the very same day that the nomination was made, 19 Republican Senators issued the following statement:

> It is the strongly held view of the undersigned that the next Chief Justice of the United States, and any nominees for the vacancies on the Supreme Court should be selected by the newly elected President of the United States, after the people have expressed themselves in November's elections.
>
> We will, therefore, because of the above principle, and with absolutely no reflection on any individuals involved, vote against confirming any Supreme Court nominations of the incumbent President.

In the nomination now before us, our Republican colleagues have repeatedly said that 100 days to consider it is too long. But the last time the situation was reversed, they wanted a delay of 7 months to even begin consideration of the nomination.

The hearings on the Fortas nomination were stormy. Some Senators shouted at the nominee, demanding that he answer questions about specific cases decided by the Supreme Court.

Of course, the opponents did not want a delay. They wanted to defeat the nomination. And they did, even though a majority of Senators favored the nomination.

A minority of Senators defeated the nomination by a filibuster, for a reason that had nothing to do with the nominee's qualifications.

In the process, as they searched for ammunition to use against the nominee, they uncovered some financial dealings which ultimately led to his resignation from the Supreme Court.

I cite this history to put the current issue into some perspective, and to rebut the view, repeated so often in recent days, that controversy over Supreme Court nominees is a recent phenomenon. It is not.

That does not justify the process in this or any other case. Just the opposite. The fact that it has been going on for so long is more, not less, reason to review the whole process.

How can we responsibly consider those nominated by the President, and do it in a way that is both perceived as and is in fact fair—fair to our obligation under the Constitution and fair to those involved in the process? We must confront and respond to that question in a way better than we have in the past.

In 1980, the Republican National Convention adopted a platform which called for the appointment of judges committed to the pro-life position on abortion.

Since 1980, in honoring that commitment, Presidents Reagan and Bush have established as a litmus test for a potential nominee to the Supreme Court that person's position on abortion.

The President opposes a woman's right of choice. In order to have any hope of being nominated to the Supreme Court, so must any potential nominee.

The President selects nominees because of their views, not despite them. That is his privilege. It is the reward of election to the Presidency. He is answerable for the quality of his choices only to the voters and history.

By the same token, the Senate is not required to rubber stamp a nomination simply because it has been made by a President.

It is illogical and untenable to suggest that the President has the right to select someone because of that person's views and then to say the Senate has no right to reject that person because of those very same views.

President Bush has exercised his right to nominate a candidate for his views on abortion, even though the nominee refuses to discuss those views publicly.

The President's current position on the issue of abortion is the minority view in the United States. A majority of Americans disagree with the President on abortion. So do a majority of Senators. As a result, it is widely believed that a nominee who agrees with the President on abortion and is willing to say so cannot be confirmed.

So the President has sought candidates who agree with him on abortion but whose views are now known or who will deny having a view. With each nomination, the process has become more elaborate and less informative.

For that reason and others, the confirmation process has become uncomfortable and demeaning for all concerned. It has taken on the trappings of a political campaign. Indeed, in the eyes of many Americans, the process has become confused with electoral politics. It must be changed.

Recently, while I was in Maine, a woman came up to me and said, with great emotion, "please vote against Judge Thomas because, if he's confirmed, the right of choice will be lost."

I told her that the right of choice was lost when George Bush was elected President. Judge Thomas will be confirmed and will soon be sitting on the Supreme Court. There he will vote to restrict the right of choice by women.

But even if Judge Thomas were not to be confirmed by the Senate, there is no possibility that another nominee will have a different view on abortion.

In the past, despite frequent political disagreement, Presidents of both parties searched for excellence in making nominations to the Supreme Court. Not always, of course. Presidents sought nominees who combined excellence with views compatible with those of the President.

The harsh reality is that the politics of abortion now dominate the process of filling vacancies on the Supreme Court. That's sad, unfortunate, and wrong for all concerned.

Throughout the hearings, Judge Thomas repeatedly invoked his personal background of deprivation and segregation as a reason why he should be confirmed.

Personal background and personal achievement undoubtedly say a great deal about character. They should be given great weight in the confirmation process.

But while invoking his early personal life as a reason for his confirmation, Judge Thomas repeatedly asked the Committee to ignore much of what he said and wrote in the more than 10 years of his adult life in public service. He said that in preparing for service on the Court, he would be like a runner stripping down for a race.

He asks us to believe that his early experience shaped him but that much of his recent experience left him untouched.

Every nominee who comes to the Senate with a record will face questions about earlier statements and writings that may be inconsistent with more recent views.

There is nothing unusual about that. The views of anyone in public life evolve, and statements made a decade ago may not reflect a current belief.

But this is the first nominee I can recall who asks just the opposite: That we consider his early experiences but ignore his recent views. We should consider his early experiences. We should also consider his recent views.

The views of an adult cannot simply be suddenly discarded like a suit of clothing.

The views of each of us develops and talks and writes about over the course of our lives influence how we see our world and how we discharge our duties.

Indeed, Judge Thomas' supporters, who repeatedly suggest he will grow in office, are resting their case on precisely that claim. They, too, suggest that opinions cannot be put on and taken off at will.

The nominee himself suggests the opposite. And we must look to his words, not those of his supporters.

At his confirmation hearing for the court of appeals in 1990, Judge Thomas said that he did not have a well-developed philosophy of constitutional adjudication and that he saw his duty on that court as applying the precedents and the law to the cases before him. On that basis, he was confirmed by the Senate.

But today he's being considered for the Supreme Court. On the Supreme Court, precedent is a guide, but precedent does not control the outcome as it must at the appellate level.

Yet today, if the evidence of the hearings is to be taken into account, he has no more developed an understanding of the Constitution and its adjudication than he brought to the appellate court in 1990.

Before appointment to the court of appeals, Judge Thomas supported the theory of natural law in interpreting the Constitution.

He wrote that natural law or higher law is the appropriate basis for "just, wise, and constitutional" adjudication. He wrote that on the basis of natural or higher law we can find the "only firm basis" for constitutional adjudication, and that this higher law is "the only alternative to the wilfulness of both run-amok majorities and run-amok judges."

Yet, at his confirmation hearing, he denied ever having suggested that higher law should be a basis for constitutional adjudication.

It is on the issue of abortion that Judge Thomas made his least believable claim.

He declined even to indicate how he evaluates the competing right of privacy of a woman and what the legitimate interests of government are, and when they come into play.

No one asked Judge Thomas to announce in advance how he will vote on a specific case. He was asked about his general views of the issue.

Judge Thomas not only failed to explain his general views. He went much further. He asked the committee to accept his claim that he never discussed the contents of the decision in Roe versus Wade, even privately, throughout an active career of speaking and writing about civil rights, individual liberties, the interests of government, economic rights, and a host of related subjects.

This contention is the more unbelievable because he used the decision in a footnote in one of his articles.

Judge Thomas is asking us to believe that he used as a reference in an article a Supreme Court decision on which he has no view and the content of which he has never discussed. That is impossible to accept. The only reason to footnote or reference anything is to illustrate or explain a related point in the main body of a text.

It defies logic and common sense for a writer to explain a point with something on which he has no opinion.

In another instance, Judge Thomas says he made a reference during a speech to an article written to defend a pro-life viewpoint in order to ingratiate himself with a conservative audience. In the speech, he called the article "a splendid example" of applying natural law.

But at the hearing he claimed not to have read the article with any care at all, not to have endorsed its conclusion, not to agree with its content.

In summary, over and over again, Judge Thomas denied, repudiated, abandoned his thoughts, his words, his views of the past decade. Over and over again, he now says he did not mean what he said, he did not mean what he wrote in the 10 years he served the Reagan and Bush administrations.

So we are faced with a nominee who has an extensive public record but who has run from his own record; a nominee who has asked the Senate to make a leap of faith that defies common sense and reason.

Of all the things that have been said about this nominee, the least believable was President Bush's statement that race was not a factor at all in the nomination and that Judge Thomas is the best qualified person in America to be on the Supreme Court. Both statements are obviously untrue.

Race clearly was a factor in the nomination. That is no reason to reject the nomination. Diversity on the Court is desirable. And in an institution which so directly affects the lives of Americans, having someone who had to overcome racism and poverty is desirable. No, race is not the issue.

Qualification is. Specifically, the nominee's lack of qualification.

Judge Thomas is not the best qualified person in America to be on the Supreme Court, as claimed by the President.

Judge Thomas is not the best qualified African-American to be on the Supreme Court. There are many, many superbly qualified African-Americans, men and women, who could serve with distinction on the Supreme Court.

A recent analysis by the Alliance for Justice indicates that Judge Thomas received the lowest rating by the American Bar Association of the last 23 nominees to the Supreme Court, going all the way back to 1955.

The hearing revealed a nominee willing to say whatever was necessary to win confirmation. It has worked. There will be the votes to confirm him to the Supreme Court. But mine will not be among them.

In the past week attention has focused almost entirely on the issue of sexual harassment. Important as the issue is, grave as the charges are, this was not the decisive factor for me. It added to my doubts about the nominee but it was not the basis for my decision.

Sexual harassment is a serious charge. In this case it was made by a credible person. The deep, emotional, and very personal reactions of millions of American women reflect how widespread sexual harassment is and how ineffective our male-dominated society has been in responding to it.

Typical, and tragic, was the response to Professor Hill. According to yesterday's New York Times and last night's NBC News, the President approved an effort, organized and orchestrated by White House aides, to attack and discredit Professor Hill, as a way of holding support for Judge Thomas. Fantasies were concocted about her in the name of accusing her of fantasy.

Under the circumstances, it was fair and appropriate to subject Professor Hill to careful, rigorous, even skeptical questioning. But what took place went beyond that. For some it became, not a search for truth, but a search and destroy mission. No doubt Judge Thomas and his supporters would make the same argument in reverse.

But what happened to Professor Hill unfortunately sent a clear and chilling message to women everywhere: If you complain about sexual harassment, you may be doubly victimized. We must not let that message stand unchallenged. Victims of illegal sexual harassment must know that they have the force of law and the support of society behind them just as much as victims of rape or any other violation of human dignity.

What happened to Professor Hill showed that our society has a long way to go before an attack on a woman's integrity and reputation are treated as seriously as one on a man's.

Obviously, the making of a charge of sexual harassment does not by itself prove that it occurred. The rights of the accused are as important as those of the accuser and must be respected.

A Senate hearing is intended to focus on legislation and broad issues of policy. That is what they usually do. But a hearing is not a good place to protect anyone's rights, or to deal at all with matters of such sensitivity. Hearings are poorly suited to determining specific questions of fact, of truth, or falsehood.

Perhaps something good may yet come from this terrible episode if the national debate which it has generated leads to changed attitudes; leads to a process where serious charges can be evaluated in a more fair and less controversial way; to a society where the words of women have the same weight as the words of men; to a society where the workplace will finally be free of all discrimination, whether by race, by sex, or in any other form.

Mr. President, I ask the Members of the Senate to remain in their seats during the vote in accordance with the rules of the Senate. This is an important vote, and I ask that decorum be maintained.

Mr. President, I request the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. Before the question is put to the Senate, the Chair will remind the galleries that expressions of approval or disapproval are prohibited.

The question is, will the Senate advise and consent to the nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the U.S. Supreme Court?

The yeas and nays have been ordered.

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. Mr. President, I want to inform Members of the Senate that this will be the last vote this evening. Under a unanimous-consent agreement previously obtained, there will be a vote tomorrow on the veto override on the unemployment compensation bill and possibly other votes on appropriations conference reports. Those remain to be worked out.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 220 Ex.]

YEAS—52

Bond	Fowler	Nickles
Boren	Garn	Nunn
Breaux	Gorton	Pressler
Brown	Gramm	Robb
Burns	Grassley	Roth
Chafee	Hatch	Rudman
Coats	Hatfield	Seymour
Cochran	Helms	Shelby
Cohen	Hollings	Simpson
Craig	Johnston	Smith
D'Amato	Kassebaum	Specter
Danforth	Kasten	Stevens
DeConcini	Lott	Symms
Dixon	Lugar	Thurmond
Dole	Mack	Wallop
Domenici	McCain	Warner
Durenberger	McConnell	
Exon	Murkowski	

NAYS—48

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Baucus	Graham	Moynihan
Bentsen	Harkin	Packwood
Biden	Heflin	Pell
Bingaman	Inouye	Pryor
Bradley	Jeffords	Reid
Bryan	Kennedy	Riegle
Bumpers	Kerrey	Rockefeller
Burdick	Kerry	Sanford
Byrd	Kohl	Sarbanes
Conrad	Lautenberg	Sasser
Cranston	Leahy	Simon
Daschle	Levin	Wellstone
Dodd	Lieberman	Wirth
Ford	Metzenbaum	Wofford

The VICE PRESIDENT. The nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the U.S. Supreme Court is hereby confirmed.

Mr. DOLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The VICE PRESIDENT. The clerk will call the roll. The Sergeant at Arms will ensure order.

The assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that immediately following the disposition of the override vote on the President's veto of S. 1722, the unemployment compensation extension bill on tomorrow at 12:15 p.m., the Senate proceed to the consideration of the conference reports to accompany the following appropriations bills in the order listed: H.R. 2426, military construction appropriations; H.R. 2698, agriculture appropriations; H.R. 2942, transportation appropriations; that there be no amendments to any amendment in disagreement; that there be no time for floor debate on either conference reports or on disposition of amendments in disagreement; and that following the disposition of each conference report or amendment in disagreement, the Senate proceed without intervening action or debate to the disposition of the next conference report.

I further ask unanimous consent that the statements with respect to any of these conference reports may be inserted in the RECORD at the appropriate place as if read; and that it now be in order to ask for the yeas and nays on the adoption of the conference reports with one show of second.

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

Mr. MITCHELL. Mr. President, I now ask for the yeas and nays on the adoption of the three conference reports that I have just listed.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. 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. BRYAN. 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

Mr. BRYAN. Mr. President, I ask unanimous consent that time be set aside for morning business.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar No. 319, Arthur J. Rothkopf to be General Counsel of the Department of Transportation.

I further ask unanimous consent that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; 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 so ordered.

The nomination, considered and confirmed, is as follows:

DEPARTMENT OF TRANSPORTATION

Arthur J. Rothkopf, of the District of Columbia, to be General Counsel of the Department of Transportation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

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 MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

VETO OF S. 1722—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 84

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 11, 1991, during the recess of the Senate, received the following message from the President of the United States:

To the Senate of the United States:

I am returning herewith without my approval S. 1722, the "Emergency Un-

employment Compensation Act of 1991." I would gladly sign into law responsible legislation that does not threaten the economic recovery and its associated job creation, a fact that members of my Administration and I have repeatedly made clear. We have worked diligently with Members of Congress to encourage them to adopt a well-crafted alternative program of extended unemployment benefits that is paid for, as required under the bipartisan budget agreement. Unfortunately, the Congress has rejected this alternative and ignored my call for passage of measures that will increase the Nation's competitiveness, productivity, and growth.

The Administration is deeply concerned about the needs of the unemployed and their families. It is essential that we take responsible actions to ensure that the economic recovery continues and strengthens, creating new employment opportunities.

If a bill providing unemployment benefits in a responsible manner—financed under the budget agreement—reached my desk, it would be signed immediately so we could provide real additional benefits to the unemployed.

S. 1722 would effectively destroy the integrity of the bipartisan budget agreement and put into place a poorly designed, unnecessarily expensive program that would significantly increase the Federal deficit. Enactment of S. 1722 would signal the failure of budget discipline, which would have a negative effect on financial markets that could threaten economic recovery and lead to increased unemployment. This legislation would not well serve the unemployed or our Nation's taxpayers.

S. 1722 violates essential elements of last year's bipartisan budget agreement. It does not include offsets for costs that the Congress projects at $6.5 billion during fiscal years 1992–1995. Instead, it simply adds this cost to the Federal deficit by requiring that the provisions of the bill be treated as "emergency requirements" designated by the President and the Congress under the Balanced Budget and Emergency Deficit Control Act of 1985. This breaches the budget agreement by denying me the independent authority to determine when an emergency exists, thereby removing a key safeguard for enforcing budget discipline.

In addition, S. 1722 is substantively flawed. It would establish a new, temporary Federal program providing three tiers of extended unemployment benefits. This complex, cumbersome system could slow reemployment and would result in benefit delays, payment inaccuracies, and escalating administrative costs. Moreover, the bill inappropriately abandons the measure of unemployment that has historically been used to trigger extended benefits, substituting an overly broad measure that is not based upon the target group—insured workers.

The Administration will continue to support alternative legislation that effectively addresses the needs of the unemployed while also maintaining the budget discipline that is imperative to the prospects of future employment and economic growth.

GEORGE BUSH.

THE WHITE HOUSE, *October 11, 1991.*

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 11, 1991, during the recess of the Senate, received a message from the House of Representatives, announcing that the House agrees to the report of the committee of conference on the disagreeing votes of the two House amendments to the amendments of the Senate to the bill (H.R. 2942) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1992, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 29, 31, 32, 85, 92, 113, 156, 158, 159, 160, and 161 to the bill, and agrees thereto; and that the House recedes from its disagreement to the amendments of the Senate numbered 7, 10, 28, 64, 67, 68, 69, 70, 71, 72, 73, 84, 86, 104, 112, 114, 115, 116, 125, 128, 133, 134, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, and 157 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 107. Joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 3280) to provide for a study, to be conducted by the National Academy of Science, on how the Government can improve the decennial census of population, and on related matters.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two House 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.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1724. An act to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary;

H.R. 2629. An act to amend the Small Business Act to assist the development of small business concerns owned and controlled by women, and for other purposes;

H.R. 3350. An act to extend the United States Commission on Civil Rights;

H.J. Res. 260. Joint resolution designating October 1991 as "Italian-American Heritage and Culture Month"; and

H.J. Res. 284. Joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week."

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 2519. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes; and

H.J. Res. 230. Joint resolution designating October 16, 1991, and October 16, 1992, each as "World Food Day."

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore [Mr. KOHL].

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1724. An act to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary; to the Committee on Finance.

H.R. 2629. An act to amend the Small Business Act to assist the development of small business concerns owned and controlled by women, and for other purposes; to the Committee on Small Business.

H.J. Res. 260. Joint resolution designating October 1991 as "Italian-American Heritage and Culture Month"; to the Committee on the Judiciary.

H.J. Res. 284. Joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week"; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3350. An act to extend the United States Commission on Civil Rights.

ENROLLED BILL SIGNED

The President pro tempore [Mr. BYRD] announced that on October 9, 1991, he had signed the following enrolled bill, previously signed by the Speaker of the House:

S. 1722. An act to provide emergency unemployment compensation, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on October 9, 1991, he had presented to the President of the United States the following enrolled bills:

S. 1722. An act to provide emergency unemployment compensation, and for other purposes; and

S. 1773. An act to extend until October 18, 1991, the legislative reinstatement of the power of Indian tribes to exercise criminal jurisdiction over Indians.

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–2023. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report on the Aviation Research Grant Program; to the Committee on Commerce, Science, and Transportation.

EC–2024. A communication from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to provide additional authority for transfer of excess wild free-roaming horses, and for other purposes; to the Committee on Energy and Natural Resources.

EC–2025. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report on national historic landmarks that have been damaged or to which damage to their integrity is anticipated for fiscal year 1990; to the Committee on Energy and Natural Resources.

EC–2026. A communication from the Director of the Office of Environmental Restoration and Waste Management, Department of Energy, transmitting, pursuant to law, notice of a delay in the submission of the annual report on progress being made by States and compacts in achieving compliance with the Low-Level Radioactive Waste Policy Amendments Act of 1985; to the Committee on Energy and Natural Resources.

EC–2027. A communication from the Inspector General, Department of Energy, transmitting, pursuant to law, the annual report on the use of the Environmental Protection Agencies Superfund monies for fiscal year 1990; to the Committee on Environment and Public Works.

EC–2028. A communication from the President of the United States, transmitting, pursuant to law, a proclamation which extends nondiscriminatory treatment to the products of the Union of Soviet Socialist Republics; to the Committee on Finance.

EC–2029. A communication from the Executive Director of the D.C. Retirement Board, transmitting, pursuant to law, financial statements of the Board Members for calendar year 1990; to the Committee on Governmental Affairs.

EC–2030. A communication from the Chairman and a Board Member of the Railroad Retirement Board, transmitting a draft of proposed legislation to amend the Railroad Retirement Act of 1974 to clarify the conditions of entitlement to certain annuity amounts, and for other purposes; to the Committee on Labor and Human Resources.

EC–2031. A communication from a Member of the Railroad Retirement Board, transmitting, for the information of the Senate, the reasons for his dissent in a recent decision of the Board; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S.J. Res. 168. A joint resolution approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of the Mongolian People's Republic (Rept. No. 102–186).

S.J. Res. 169. A joint resolution approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of the Republic of Bulgaria (Rept. No. 102–187).

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. 1530. A bill to authorize the integration of employment, training and related services provided by Indian tribes (Rept. No. 102–188).

By Mr. BURDICK, from the Committee on Environment and Public Works, with amendments:

S. 36. A bill entitled the "New York City Zebra Mussel Monitoring Act of 1991" (Rept. No. 102–189).

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. D'AMATO:

S. 1829. A bill to expand the exclusion of service of election officials or election workers from social security coverage; to the Committee on Finance.

By Mr. WOFFORD:

S. 1830. A bill to require Senators and Members of the House of Representatives to pay for medical services provided by the Office of the Attending Physician, and for other purposes; to the Committee on Rules and Administration.

By Mr. ROTH:

S. 1831. A bill to amend the Internal Revenue Code of 1986 to encourage investments in new manufacturing and other productive equipment by allowing an investment tax credit to taxpayers who increase the amount of such investments; to the Committee on Finance.

By Mr. INOUYE:

S. 1832. A bill to amend the Foreign Trade Zones Act to permit the deferral of payment of duty on certain production equipment; to the Committee on Finance.

By Mr. MITCHELL (for himself and Mr. DOLE) (by request):

S.J. Res. 215. A joint resolution approving the extension of nondiscriminatory treatment (most-favored nation treatment) to the products of the Union of Soviet Socialist Republics; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SIMON:

S. Res. 194. A resolution relative to appointments to the United States Supreme Court; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself, Mr. PELL, and Mr. CRANSTON):

S. Res. 195. A resolution to congratulate Daw Aung San Kyi of Burma on her award of the Nobel Peace Prize; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO:

S. 1829. A bill to expand the exclusion of service of election officials or election workers from Social Security coverage; to the Committee on Finance.

FAIRNESS TO ELECTION WORKERS

• Mr. D'AMATO. Mr. President, I rise today to introduce legislation that will correct a serious inequity included in last year's Budget Act. This inequity actually serves to penalize those who devote their time and effort to staffing our polling booths on election days. As the month of November draws near, many municipalities in this Nation will be engaged in the electoral process. It would not be fair if the dedication of these individuals was cynically rewarded by the outstretched hands of greedy tax collectors.

When Congress passed the Omnibus Budget Act of 1990, buried within was a provision that stated that all services rendered by election workers or election inspectors must be covered by Social Security and Medicare. An exemption was granted to those workers whose stipend was less than $100 in a calendar year. However, this so-called exemption is not as gratuitous as it sounds. I have heard from a number of election officials in my State who have told me that unless this exemption is raised, they will lose these dedicated workers. Many of these workers in my State exceed the $100 limit in just 2 days of election work. Few earn more than $400 or $500 a year.

Municipal election officials have conveyed to me that without adequate changes, this provision will add significant costs to employing election workers. In New York City alone, the director of the board of elections has informed me that the city faces a potential cost of approximately $1.8 million for 1992. The administrative burden of keeping payroll records for the entire year would also affect municipal finances. In New York City such recordkeeping would be extremely prohibitive as there are nearly 25,000 election workers employed each election day.

The bill that I am introducing today will end this penalty on election workers throughout our Nation. Simply put, my bill raises the exemption from $100 to $750. The Congressional Budget Office estimated the costs of similar legislation in the House and found the annual costs to be minimal. The CBO analyzed H.R. 1771, which raises the $100 exemption to $500 and found that its annual costs are $16 million. I have been informed that even though my bill will raise the exemption to $750, the costs will not increase significantly

over that mark due to the generally low annual pay for these election employees. With the higher figure, my bill will simply make sure that all affected employees are covered.

Mr. President, election employees are too valuable to the maintenance of our democratic process to subject them to such a penalty. An increase in the deduction will make a difference between retaining qualified election workers or struggling to keep polling booths open. My legislation will alleviate this problem at a relatively minimal cost. I urge my colleagues to cosponsor this bill and the Senate to consider and pass this legislation quickly.

I ask unanimous consent that the text of this legislation follow my remarks.

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

S. 1829

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF EXCLUSION OF SERVICE OF ELECTION OFFICIALS OR ELECTION WORKERS FROM SOCIAL SECURITY COVERAGE.

(a) LIMITATION ON MANDATORY COVERAGE OF STATE ELECTION OFFICIALS AND ELECTION WORKERS WITHOUT STATE RETIREMENT SYSTEM.—

(1) AMENDMENT TO SOCIAL SECURITY ACT.—Section 210(a)(7)(F)(iv) of the Social Security Act (42 U.S.C. 410(a)(7)(F)(iv)) is amended by striking "$100" and inserting "$750".

(2) AMENDMENT TO FICA.—Section 3121(b)(7) of the Internal Revenue Code of 1986 is amended by striking "$100" and inserting "$750".

(b) CONFORMING AMENDMENTS RELATING TO MEDICARE QUALIFIED GOVERNMENT EMPLOYMENT.—

(1) AMENDMENT TO SOCIAL SECURITY ACT.—Section 210(p)(2)(E) of the Social Security Act (42 U.S.C. 410(p)(2)(E)) is amended by striking $100" and inserting "$750".

(2) AMENDMENT TO FICA.—Section 3121(u)(2)(B)(ii)(V) of the Internal Revenue Code of 1986 is amended by striking "$100" and inserting "$750".

(c) AUTHORITY FOR STATES TO MODIFY COVERAGE AGREEMENTS WITH RESPECT TO ELECTION OFFICIALS AND ELECTION WORKERS.—Section 218(c)(8) of the Social Security Act (42 U.S.C. 418(c)(8)) is amended—

(1) by striking "January 1, 1968" and inserting "July 1, 1991"; and

(2) by striking "$100" and inserting "$750".

(e) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to service performed on or after July 1, 1991.●

By Mr. WOFFORD:

S. 1830. A bill to require Senators and Members of the House of Representatives to pay for medical services provided by the Office of the Attending Physician, and for other purposes; to the Committee on Rules and Administration.

PAYMENT FOR SERVICES OF THE ATTENDING PHYSICIAN

● Mr. WOFFORD. Mr. President, when I was sworn in earlier this year, I was surprised to find out that Senators and Members of the House of Representatives pay nothing for the medical services they receive from the Office of the Attending Physician. Senators and Representatives do not pay for routine checkups. They don't pay for medical tests or medication or x rays. And we cannot forget that although these health benefits provided by the attending physician are free to Senators and Representatives, they cost the taxpayers a great deal.

I am concerned, Mr. President, that the free health care provided by the attending physician has caused Congress to be insensitive to the deep concern of most Americans regarding the increasingly unaffordable cost of their health care. I am concerned that this free health care has caused Congress to be insensitive to the fears most American families have about their health care. They rightly fear that if they lose their job they will lose their health insurance; that if they get sick their premiums will skyrocket and that just when they need it the most, an insurance company may cancel their coverage.

Congress' taxpayer-financed health care has isolated its Members from the urgent need to enact a program of national health insurance.

I rise today to introduce legislation to put my colleagues on an equal footing with other working Americans when it comes to health care. The legislation I am introducing today would require all Senators and Members of the House of Representatives to pay the full market value for all medical services, medical tests and medications provided to them by the Office of the Attending Physician.

This legislation is meant as a wakeup call to Congress. It is intended to take away the special privilege of free health care so that Members of Congress will better appreciate the need for a system of national health insurance. And I will keep pushing this legislation until such time as Congress enacts a national health insurance system that provides affordable care for all American families.

It says in our Constitution that those accused of a crime have a right to a lawyer. Yet millions of Americans aren't able to see a doctor when they're sick. If criminals have the right to a lawyer, I think working Americans should have the right to a doctor. That's why I want Congress to enact national health insurance. Because health care is a right, not a privilege.●

By Mr. ROTH:

S. 1831. A bill to amend the Internal Revenue Code of 1986 to encourage investments in new manufacturing and other productive equipment by allowing an investment tax credit to taxpayers who increase the amount of such investments; to the Committee on Finance.

INVESTMENT INCENTIVE AND RECOVERY ACT OF 1991

● Mr. ROTH. Mr. President, it is painfully obvious that the current recession is not going to go away by itself. In fact, President Bush recently conceded that although payrolls grew slightly in September, "all is not well" and he is "deeply concerned about those who are out of work." And it is without a doubt that since the days of the steam engine, the cotton gin, and the Model T Ford, America has relied upon mechanization and production equipment to fuel the creation of jobs. In our country's short income tax history since 1913, the Congress has often reenacted or reinvigorated some form of the investment tax credit—most recently in 1969 only to be repealed in the Tax Reform Act of 1986—in order to speed the growth of the economy. Today I rise to address and connect these two intertwined subjects—jobs and our investment in machinery—and introduce a new kind of investment tax credit. Indeed, a more efficient investment tax credit, designed to bring about the same kind of incentives to invest in our country at a fraction of the cost of the old program.

My approach is simple, but its effects would be dramatic on the current economy. The incremental investment tax credit that I propose would be modeled after the highly successful and proven formula that is known as the research and experimentation credit and is embodied in section 41 of the Internal Revenue Code. By using this model, I believe that the Government will get the "most bang for the buck." In short, rather than providing for a flat 10-percent credit on all property as before—an expensive proposition—this proposal provides a 10-percent credit, but only on the amount by which your business increases its investment in manufacturing and productive equipment. Thus, an incremental investment tax credit. This idea would create a tremendous incentive for American companies to invest in their future. A future that includes a bright prospect for increasing technology and productivity in our ever-increasing global economy.

The primary difference between this new credit and the research and development credit is the kind of property that it applies to. The research credit applies to research expenses while this credit applies to equipment investment. The proper question to ask is "why encourage business to invest in equipment?"

Let me turn to some important evidence. Lawrence H. Summers, former professor of political economy at Harvard University and currently the chief economist at the World Bank, together with Prof. J. Bradford De Long of Harvard, have concluded that a close relationship exists between investment and growth. More specifically, they have concluded that, for a broad cross-sec-

tion of nations, every 1 percent of gross domestic product [GDP] that is invested in equipment is associated with an increase in the GDP growth rate itself of one-third of 1 percent—a very substantial rate of return. Summers and De Long conclude that investment in equipment is perhaps the single most important factor in economic growth and development. They have written that there are "at least three grounds for suspecting that equipment investment may have higher social returns than other forms of investment."

First, historical accounts of economic growth invariably assign a central role to mechanization. In other words, nations have been defined through economic history depending upon their industries' ability to seize the opportunity in manufacturing—and grow rapidly, or fail to continue to invest in manufacturing and stagnate and decline.

Second, is external economies or linkages as causes of growth. In other words, what particular nerves in the economy can be pinched in order to stir economic growth. Summers and De Long note that manufacturing accounts for 95 percent of private sector research and development in America, and within manufacturing the equipment sector accounts for more than half of research and development. Thus, these economists argue that it is plausible that equipment investment will give rise to especially important external economies.

Third, a number of countries have succeeded in growing rapidly by pursuing a government-led developmental state approach to development. In short, the argument is that countries that invest more heavily in, and enjoy, lower equipment prices should enjoy more rapid growth than those that do not.

After an extensive analysis of the correlations, Dr. Summers and J. Bradford DeLong, conclude in their paper that there is a strong association between rates of equipment investment and growth. And in the final analysis that is what is important. Without a strong and vibrant economy, that can compete on the international level, we will slip into being a country of inefficiencies and mediocrity. What the Congress should be concentrating on is creating jobs by passing legislation that will stimulate the economy. It makes no sense, to me, for the Congress to pass higher taxes, like the luxury excise taxes passed last year, only to throw hard-working Americans that want to work into the unemployment line. What we should be doing, is repealing those taxes that cost jobs and tie Americans to a Government payment program that they don't want, and instead concentrate on passing high growth tax incentives, like this one.

I would like to emphasize the important role that taxes play in investment decisions that are made. Estimates by Stanford University Prof. John B. Shoven show that taxes account for up to one-third of U.S. capital costs. The Tax Reform Act of 1986 raised effective tax rates on equipment and structures for corporate taxpayers largely through the repeal of the investment tax credit, lengthening of recovery periods and a new alternative minimum tax system. In addition, an analysis by the accounting firm Arthur Andersen shows that for equipment that is technologically innovative or crucial to U.S. economic strength, our capital cost recovery lags badly behind our major competitors. Am I alone in noting that the United States is falling seriously behind Japan in saving and investing? Comparing the period from 1985–89 Japan invested a much larger portion of its GNP, 29.2 percent, as compared with only 17.2 percent in the United States. Even worse is the fact that in Japan, where the economy is just over one-half that of the United States, they are investing more in absolute dollar amounts than is the United States. In 1990, Japan's nonresidential fixed investment equalled $675 billion, while the comparable United States figure was only $524 billion, with a gross domestic product [GDP] equal to about twice that of Japan. Worse yet, from 1973 to 1988 saving and investment as a percent of GDP was lower for the United States than for any of our major competitors with the exception of the United Kingdom.

Even more dismal statistics were developed by Dr. Charles Steindel of the Federal Reserve Bank of New York to compare U.S. investment in productive manufacturing equipment over recent decades. The results are depressing. Dr. Steindel's figures show an average increase in industrial equipment of 4 to 5 percent for the three decades ending in 1979, but falling to an abysmally low level of 1.6 percent for the decade of the eighties. This low level of productive equipment investment marks an era of slower growth and reduced U.S. competitiveness. An era that has already begun, and is demonstrated by today's release of the statistics on Japan's trade surplus with the United States. A surplus that grew by 41.7 percent in September from a year earlier, a new record.

It is time that the Congress concentrate on the real problem at hand—the creation of new jobs, rather than allowing more Americans to suffer the consequences of a Congress that is willing to stimulate only higher taxes and greater transfer payments in an effort to console those suffering from a lost job. Let's do something about the U.S. competitiveness problem that so many spend so much time talking about, but spend little time really trying to solve. I ask that my colleagues join me in my efforts to improve the U.S. ability to compete by cosponsoring this legislation. Mr. President, I ask unanimous consent that an explanation of the bill and the bill itself be printed in the RECORD.

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

S. 1831

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INVESTMENT CREDIT FOR NEW MANUFACTURING AND OTHER PRODUCTION EQUIPMENT.

(a) ALLOWANCE OF CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to amount of investment credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(4) the manufacturing and other productive equipment credit."

"(b) AMOUNT OF CREDIT.— Section 48 of such Code is amended by adding at the end thereof the following new subsection:

"(c) MANUFACTURING AND OTHER PRODUCTIVE EQUIPMENT CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the manufacturing and other productive equipment credit for any taxable year is an amount equal to 10 percent of the excess (if any) of—

"(A) the aggregate bases of qualified manufacturing and productive equipment properties placed in service during such taxable year, over

"(B) the base amount.

"(2) QUALIFIED MANUFACTURING AND PRODUCTIVE EQUIPMENT PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified manufacturing and productive equipment property' means any property—

"(i) which is used as an integral part of the manufacture or production of tangible personal property,

"(ii) which is tangible property to which section 168 applies,

"(iii) which is section 1245 property (as defined in section 1245(a)(3)), and

"(iv)(I) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(II) which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

"(B) SPECIAL RULE FOR COMPUTER SOFTWARE.—In the case of any computer software which is used to control or monitor a manufacturing or production process and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, such software shall be treated as qualified manufacturing and productive equipment property.

"(3) BASE AMOUNT.—For purposes of paragraph (1)(B)—

"(A) IN GENERAL.—The term 'base amount' means the product of—

"(i) the fixed-base percentage, and

"(ii) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereafter in this subsection referred to as the 'credit year').

"(B) MINIMUM BASE AMOUNT.—In no event shall the base amount be less than 50 percent of the amount determined under paragraph (1)(A).

"(C) FIXED-BASE PERCENTAGE.—

"(i) IN GENERAL.—The fixed-base percentage is the percentage which the aggregate amounts described in paragraph (1)(A) for taxable years beginning after December 31, 1986, and before January 1, 1992, is of the aggregate gross receipts of the taxpayer for such taxable years.

"(ii) ROUNDING.—The percentages determined under clause (i) shall be rounded to the nearest 1/100 of 1 percent.

"(D) OTHER RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 41(c) shall apply for purposes of this paragraph.

"(4) COORDINATION WITH OTHER CREDITS.—This subsection shall not apply to any property to which the energy credit or rehabilitation credit would apply unless the taxpayer elects to waive the application of such credits to such property.

"(5) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to rules of subsection (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection."

(c) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 49(a)(1)(C) of such Code is amended by inserting "or qualified manufacturing and productive equipment property" after "energy property".

(2) Subparagraph (E) of section 50(a)(2) of such Code is amended by inserting "or 48(c)(5)" before the period at the end thereof.

(3) Paragraph (5) of section 50(a) of such Code is amended by adding at the end thereof the following new subparagraph:

"(D) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualified manufacturing and productive equipment property which is 3-year property (within the meaning of section 168(e))—

"(i) the percentage set forth in clause (ii) of the table contained in paragraph (1)(B) shall be 66 percent,

"(ii) the percentage set forth in clause (iii) of such table shall be 33 percent, and

"(iii) clauses (iv) and (v) of such table shall not apply."

(4)(A) The section heading for section 48 of such Code is amended to read as follows:

"SEC. 48. OTHER CREDITS."

(B) The table of sections for subpart E of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 48 and inserting the following:

"Sec. 48. Other credits."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) property acquired by the taxpayer after December 31, 1991, and

(2) property the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1991, but to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date.

GENERAL EXPLANATION OF THE INCREMENTAL INVESTMENT TAX CREDIT

CURRENT LAW

The investment tax credit was repealed as part of the 1986 Tax Reform Act. Prior to that, a regular investment tax credit of ten percent was available for a taxpayer's investment in tangible personal property and certain other tangible property, but not for buildings and structural components of buildings. In the case of ACRS three year property, the amount of the credit was generally equal to six percent. In addition, a reduction of the property's depreciable basis equal to fifty percent of the regular investment tax credit applied to the property. As an alternative to the basis reduction of fifty percent, an election could be made to decrease the regular investment tax credit percentage by two points. The total cost of new eligible property qualified for the credit, while used property could not exceed $125,000 in a single taxable year. In addition special rules applied for the "at-risk limitation," leased property and recapture of the credit. The amount of tax liability that could be offset by the investment tax credit in any year could not exceed $25,000 plus 85 percent of the tax liability in excess of $25,000. Credit in excess of this limitation could be carried back three years and forward 15 years.

REASONS FOR CHANGE

Real investment in machinery and equipment has declined since repeal of the investment tax credit in 1986. The economy has experienced three consecutive quarters of decline, after having over 90 consecutive months of unprecedented peacetime growth following the tax cuts of the Roth-Kemp Tax Act in 1981. Encouraging investment in new equipment and modernization of existing equipment will improve the long-term ability of the economy to achieve economic growth consistent with past rates of growth without inflationary pressures. Also, increasing aggregate demand by increased investment incentives constitutes an important element in a balanced program of economic recovery.

EXPLANATION OF PROVISION

The short title of the bill shall be "The Investment Incentive and Recovery Act of 1991." The annual credit is equal to ten percent of the excess of "qualified manufacturing and productive equipment" property acquired and placed in service or constructed during the tax year, over the base amount. The base amount is computed by multiplying the taxpayer's "fixed based percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. The "fixed base percentage" shall be equal to the ratio of the taxpayer's total aggregate qualified research expenses for taxable years beginning after December 31, 1986 and before January 1, 1992, and the aggregate gross receipts of the taxpayer for the same taxable years. But the base amount cannot be less than 50% of the qualified investment expenditures for the current year. It is expected that hearings on the subject will result in a minimum level for start-up companies which would not otherwise have a "base amount."

The investment credit is computed under Section 46 and it is claimed as one of the components of the general business credit under Section 38. Thus, it is subject to the net tax liability limitation of Section 38 and the carryback and carryforward rules Section 39. It does not apply to any property to which the energy credit or rehabilitation credit would apply unless the taxpayer elects to waive the application of these credits to such property.

Qualified manufacturing and productive equipment property means property which is used as an integral part of the manufacture or production of tangible personal property, which is tangible property to which section 168 applies, and which is section 1245 property. Additional rules require that the construction, reconstruction or erection of the property be completed by the taxpayer; or alternatively, acquired by the taxpayer if the original use of the property begins with that taxpayer. Such property would specifically include depreciable software used in the business.

There will be no reduction in the basis of the assets as a result of the credit.

No incremental investment tax credit is allowed for qualified property to the extent such property is financed with nonqualified nonrecourse borrowing.

Noncorporate lessors and S corporations are eligible for the incremental investment tax credit only if (1) the leased property has been manufactured or produced by the lessor or (2) the term of the lease is less than 50% of the ADR class life for recovery property of the leased property and the lessor's business expense deductions related to the property are more than 15% of the rental income from the property for the first year of the lease. The owner may elect to pass on the incremental investment tax credit to the lessee if the leased property is new qualified property and is qualifying property both to the owner and to the lessee. However, a special rule would deny the credit when a tax exempt sells depreciable property to pass the tax benefits to the new owners and leases back the property.•

By Mr. INOUYE:

S. 1832. A bill to amend the Foreign Trade Zones Act to permit the deferral of payment of duty on certain production equipment; to the Committee on Finance.

DEFERRAL OF DUTY ON CERTAIN PRODUCTION EQUIPMENT

• Mr. INOUYE. Mr. President, today I am introducing a bill to allow for the deferral of duty on merchandise admitted into U.S. foreign trade zone—or subzone—for use within such zone as production equipment, or parts thereof, until such merchandise is completely assembled, installed, tested and used in the production for which it was admitted. This bill does not relieve any manufacturer operating in a U.S. foreign trade zone or subzone of its obligation to pay all applicable duty on such equipment, but rather it would allow these firms to defer the payment of duty until the equipment begins commercial operations in the zone—or subzone, or enters the customs territory of the United States. The duty chargeable shall be at the same rate as would have been imposed on such production machinery and related equipment, and parts thereof—taking into account the privileged foreign or nonprivileged foreign zone status of the merchandise—had duty been imposed at the time of entry into the customs territory of the United States.

This legislation provides several practical advantages for U.S. manufacturers. Production equipment entering customs territory subject to duty often must be stored, assembled, tested, and/or reconfigured prior to beginning commercial operation for its intended purpose. Many times this equipment is found to be broken, flawed, lacking in components or materials and/or otherwise scrapped as useless. If duties have been filed, recovery of these funds through drawbacks can be burdensome and often full recovery of these financial resources is never realized. This can provide a tremendous financial

strain on U.S. manufacturing firms by imposing an unnecessary economic burden.

Under current law, production and capital equipment can be produced or assembled in one foreign-trade zone, entered into the customs territory with payment of duties, and then transferred to another zone where it will be used. However, for many firms, this is not always a realistic solution. Often production and capital equipment used in a foreign trade zone, once assembled, cannot be moved.

Prior to 1988, the U.S. Customs Service allowed for the deferral of duty on foreign production equipment in U.S. foreign trade zones where it was to be used until such time the equipment was placed in commercial operation. In 1988, however, Customs overturned its own ruling without any direction from Congress.

This legislation is consistent with the intent of the Foreign Trade Zones Act of 1934—19 U.S.C. 81c—which provides for the deferral of duty on merchandise in a foreign-trade zone.

Mr. President, I realize this bill will not eliminate the U.S. trade imbalance but it will remove an unnecessary economic burden on U.S. manufacturers and will further enhance our ability to compete in the global marketplace. Further, it will help preserve the American manufacturing base and preserve American jobs. For these reasons, I urge important legislation.●

ADDITIONAL COSPONSORS

S. 140

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 141

At the request of Mr. DASCHLE, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 141, a bill to amend the Internal Revenue Code of 1986 to extend the solar and geothermal energy tax credits through 1996.

S. 239

At the request of Mr. SARBANES, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor 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. 284

At the request of Mr. LIEBERMAN, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of payments under life insurance contracts for terminally ill individuals.

S. 359

At the request of Mr. GORTON, his name 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. 489

At the request of Mr. HATCH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 489, a bill to provide grants to States to encourage States to improve their systems for compensating individuals injured in the course of the provision of health care services, to establish uniform criteria for awarding damages in health care malpractice actions, and for other purposes.

S. 493

At the request of Mr. KENNEDY, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 493, a bill to amend the Public Health Service Act to improve the health of pregnant women, infants and children through the provision of comprehensive primary and preventive care, and for other purposes.

S. 757

At the request of Mr. LEAHY, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 757, a bill to amend the Food Stamp Act of 1977 to respond to the hunger emergency afflicting American families and children, to attack the causes of hunger among all Americans, to ensure an adequate diet for low-income people who are homeless or at risk of homelessness because of the shortage of affordable housing, to promote self-sufficiency among food stamp recipients, to assist families affected by adverse economic conditions, to simplify food assistance programs' administration, and for other purposes.

S. 765

At the request of Mr. BREAUX, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer Social Security taxes on cash tips.

S. 840

At the request of Mr. DURENBERGER, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 840, a bill to amend the Internal Revenue Code of 1986 to provide a simplified method for computing the deductions allowable to home day care providers for the business use of their homes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from New Jersey [Mr. LAUTENBERG] 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. 878

At the request of Mr. DODD, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 878, a bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 964

At the request of Mr. MCCAIN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 964, a bill to establish a Social Security Notch Fairness Investigatory Commission.

S. 972

At the request of Mr. BRADLEY, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 972, a bill to amend the Social Security Act to add a new title under such Act to provide assistance to States in providing services to support informal caregivers of individuals with functional limitations.

S. 1111

At the request of Mr. MITCHELL, the name of the Senator from Minnesota [Mr. WELLSTONE] 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. 1157

At the request of Mr. DASCHLE, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 1157, a bill to amend the Internal Revenue Code of 1986 to allow the energy investment credit for solar energy and geothermal property against the entire regular tax and the alternative minimum tax.

S. 1261

At the request of Mr. DOLE, the names of the Senator from Indiana [Mr. COATS], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1301

At the request of Mr. CRAIG, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1301, a bill to establish grant programs and provide other forms of Federal assistance to pregnant women, children in need of adoptive families, and individuals and families adopting children, and for other purposes.

S. 1424

At the request of Mr. CONRAD, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1424, a bill to amend chapter 17 of title 38, United States Code, to require

the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas of the United States.

S. 1455

At the request of Mr. GRAHAM, the names of the Senator from Maine [Mr. MITCHELL], the Senator from Illinois [Mr. SIMON], the Senator from North Dakota [Mr. BURDICK], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Virginia [Mr. WARNER], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 1455, a bill entitled the "World Cup USA 1994 Commemorative Coin Act."

S. 1533

At the request of Mr. BRYAN, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1533, a bill to establish a statute of limitations for private rights of action arising from a violation of the Securities Exchange Act of 1934.

S. 1537

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 1537, a bill to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail.

S. 1572

At the request of Mr. BREAUX, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 1572, a bill to amend title XVIII of the Social Security Act to eliminate the requirement that extended care services be provided not later than 30 days after a period of hospitalization of not fewer than 3 consecutive days in order to be covered under part A of the Medicare program, and to expand home health services under such program.

S. 1599

At the request of Mr. BRADLEY, the names of the Senator from Illinois [Mr. DIXON], the Senator from Maryland [Ms. MIKULSKI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Tennessee [Mr. GORE], the Senator from Michigan [Mr. LEVIN], the Senator from Wyoming [Mr. WALLOP], the Senator from Wisconsin [Mr. KASTEN], the Senator from Connecticut [Mr. DODD], the Senator from Washington [Mr. ADAMS], the Senator from Utah [Mr. HATCH], the Senator from Illinois [Mr. SIMON], the Senator from New Mexico [Mr. DOMENICI], the Senator from Washington [Mr. GORTON], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Arizona [Mr. MCCAIN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Florida [Mr. GRAHAM], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. GLENN], the Senator from Pennsylvania [Mr. WOFFORD], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of S. 1599, a bill to extend nondiscriminatory (most-favored-nation) treatment to Estonia, Latvia, and Lithuania.

S. 1623

At the request of Mr. DECONCINI, the names of the Senator from North Dakota [Mr. BURDICK] and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of S. 1623, a bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1691

At the request of Mr. DIXON, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1691, a bill to amend title 18, United States Code, to govern participation of Federal Prison Industries in Federal procurements, and for other purposes.

S. 1712

At the request of Mr. BROWN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1712, a bill to provide an annuity to certain surviving spouses and dependent children of Reserve members of the Armed Forces who died between September 21, 1972, and September 30, 1978.

S. 1725

At the request of Mr. DIXON, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Utah [Mr. HATCH], the Senator from Hawaii [Mr. AKAKA], the Senator from Wisconsin [Mr. KASTEN], the Senator from Connecticut [Mr. DODD], the Senator from Kansas [Mr. DOLE], the Senator from Rhode Island [Mr. PELL], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 1725, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the first voyage to the New World by Christopher Columbus and to establish the Christopher Columbus Quincentenary Scholarship Foundation and an Endowment Fund, and for related purposes.

S. 1777

At the request of Mr. ADAMS, the names of the Senator from Montana [Mr. BURNS], the Senator from New York [Mr. MOYNIHAN], the Senator from Vermont [Mr. JEFFORDS], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 1777, a bill to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes.

S. 1786

At the request of Mr. BAUCUS, the names of the Senator from Wisconsin [Mr. KASTEN] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1789

At the request of Mr. DURENBERGER, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1789, a bill to provide emergency unemployment compensation, and for other purposes.

S. 1793

At the request of Mr. D'AMATO, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1793, a bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes.

S. 1810

At the request of Mr. DURENBERGER, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of 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.

S. 1828

At the request of Mr. KENNEDY, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 1828, a bill to provide extended unemployment benefits during periods of high unemployment to railroad employees who have less than 10 years of service.

SENATE JOINT RESOLUTION 147

At the request of Mr. LEAHY, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 147, a joint resolution designating October 16, 1991, and October 16, 1992, as "World Food Day."

SENATE JOINT RESOLUTION 164

At the request of Mr. GORE, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 164, a joint resolution designating the weeks of October 27, 1991, through November 2, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week."

SENATE JOINT RESOLUTION 166

At the request of Mrs. KASSEBAUM, the names of the Senator from Missouri [Mr. BOND], the Senator from Utah [Mr. HATCH], the Senator from Tennessee [Mr. GORE], the Senator from Tennessee [Mr. SASSER], the Senator from Illinois [Mr. SIMON], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992, as "National Women in Agriculture Day."

SENATE JOINT RESOLUTION 197

At the request of Mr. COCHRAN, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 197, a joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day."

SENATE JOINT RESOLUTION 198

At the request of Mr. AKAKA, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Joint Resolution 198, a joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

SENATE CONCURRENT RESOLUTION 45

At the request of Mr. DECONCINI, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Concurrent Resolution 45, a concurrent resolution to express the sense of the Congress that the President should consider certain factors in 1992 before recommending extension of the waiver authority under section 402(c) of the Trade Act of 1974 with respect to the Union of Soviet Socialist Republics.

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. HATFIELD, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Concurrent Resolution 68, a concurrent resolution expressing the sense of the Congress relating to encouraging the use of paid leave by working parents for the purpose of attending parent-teacher conferences.

SENATE RESOLUTION 194—RELATIVE TO APPOINTMENTS TO THE UNITED STATES SUPREME COURT

Mr. SIMON submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 194

Whereas the Constitution calls on the Senate to give "advice and consent" to nominations to the United States Supreme Court, and

Whereas in recent times the "advice" portion of this phrase has not been exercised by the Senate: Now, therefore, be it

Resolved by the Senate, that it is the sense of the Senate, That—

First, that the President, in determining whom to name to any future Supreme Court vacancies, should keep philosophical balance in mind, so that the law is not like a pendulum, swinging back and forth depending upon the philosophy of the President; and,

Second, that before a name is submitted to the Senate there should be informal, bipartisan consultation with some members of the Senate on who is to be named to the Supreme Court before a name is submitted to the Senate.

SENATE RESOLUTION 195—CONGRATULATING DAW AUNG SAN SUU KYI OF BURMA ON HER AWARD OF THE NOBEL PEACE PRIZE

Mr. MOYNIHAN (for himself, Mr. PELL, and Mr. CRANSTON) submitted the following resolution; which was considered and agreed to:

S. RES. 195

Whereas since 1962 the people of Burma have lived under brutal military repression;

Whereas in 1988 the people of Burma rebelled against their repression through massive peaceful demonstrations in support of democratic reform;

Whereas Daw Aung San Suu Kyi emerged as the leader of the Burmese people seeking peaceful and democratic change;

Whereas Daw Aung San Suu Kyi helped to establish the National League for Democracy in Burma which contested and overwhelmingly won the elections of May 1990;

Whereas Daw Aung San Suu Kyi has been kept under house arrest by the Burmese military junta since July 1989 and denied all visits from family and friends;

Whereas the Burmese military junta has ignored the election results of May 1990 and the Burmese people still suffer the harshest forms of repression by the junta, including arrest, torture and murder;

Whereas Daw Aung San Suu Kyi remains the symbol of hope and dignity for the Burmese people seeking peaceful and democratic change, and

Whereas on October 14, 1991 Daw Aung San Suu Kyi was awarded the Nobel Peace Price in recognition of her struggle and that of the Burmese people: Now, therefore, be it

Resolved, That in recognition of the heroism and inspiriting struggle of Daw Aung San Suu Kyi to being peace and democracy to Burma, the Senate—

(1) takes great satisfaction in the award of the Nobel Peace Prize to Daw Aung San Suu Kyi, and offers its highest congratulations to her and the Burmese people;

(2) expresses in the strongest possible terms its continued condemnation of the Burmese military junta for its repression and violations of internationally accepted human rights;

(3) voices its continued and unwavering support for Daw Aung San Suu Kyi and the people of Burma in their struggle for peaceful and democratic change;

(4) calls upon the President, the Secretary of State and the United States Permanent Representative to the United Nations to—

(i) publicly congratulate Daw Aung San Suu Kyi on her award of the Nobel Peace Prize;

(ii) take the strongest possible action, including support for international sanctions, including arms and trade embargoes, against the Burmese military junta;

(iii) encourage the restoration of democracy in Burma and condemn violations of human rights, and

(iv) advocate the immediate and unconditional release of Daw Aung San Suu Kyi from house arrest.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following hearings in 485 Russell Senate Office Building.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

Thursday, October 17, 1991, 2-4 p.m. Hearing on S. 1687, the Indian Tribal Government Waste Management Act of 1991;

Tuesday, October 22, 1991, 9-11 a.m. Hearing on S. 1315, the Indian Federal Recognition Administrative Procedures Act of 1991; and

Tuesday, October 29, 1991, 9:30-11:30 a.m. Joint hearing with the House Interior committee on H.R. 1476, the San Carlos Indian Irrigation Project Divestiture Act of 1991.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research and General Legislation will hold a hearing on the viability of the U.S. grain inspection system. The hearing will be held on Tuesday, October 22, 1991, at 9 a.m. in SR-332. Senator THOMAS DASCHLE will preside.

For further information please contact Wade Fauth at 224-2321.

Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research and General Legislation will hold a hearing on reducing foreign material limits in official soybean standards. The hearing will be held on Tuesday, October 29, 1991, at 2:30 p.m. in SR-332. Senator THOMAS DASCHLE will preside.

For further information please contact Wade Fauth at 224-2321.

ADDITIONAL STATEMENTS

UNFAIR TRADE CASES

• Mr. WOFFORD. Mr. President, today the International Trade Commission is holding a hearing on unfair trade cases filed by a group of domestic steel pipe producers. These producers—three of whom are located in Pennsylvania—have been forced to sue in response to illegal dumping of standard pipe by Brazil, Korea, Mexico, Romania, Taiwan, and Venezuela. A subsidy case has also been filed against Brazil.

This case is significant because it comes at a crucial point in time. The imminent expiration of the Voluntary Restraint Agreements [VRA's] and the lack of apparent progress in the Multilateral Steel Agreement [MSA] and the GATT talks have our Nation's indus-

tries worried about the future of U.S. trade laws—and our Nation's workers worried about their jobs.

And they should be worried. Imports from these six countries are up by more than 20 percent so far this year, despite a soft market here. The market share of these nations has grown from 25 percent in 1990 to 33 percent in the first half of 1991. The effect of this import surge is unmistakable: Employment in the steel standard pipe industry, which produces equipment for plumbing, heating, and air conditioning systems and other industrial and residential uses, is down by more than 15 percent.

The case to be considered today by the ITC could very well be a preview of future U.S. trade action. If there is no multilateral framework such as the VRA's or an MSA within which to work, companies will be forced to bring suits such as this one in every case of injury. Although antidumping and countervailing duty laws do protect domestic producers, bringing such suits is complicated, expensive, and time-consuming.

Our trading partners, however, are using the MSA and the GATT talks to push for relaxation of these trade laws—laws that many of our trading partners have persistently worked to circumvent. It is clear that we have to preserve our trade laws even as we continue to negotiate larger multilateral agreements if our domestic industries are to remain competitive and the people who have spent their lives working to make our products the best in the world continue to hold secure, high-paying jobs.

Some analysts say that mature manufacturing industries such as steel production are better left to low-wage developing nations like Korea. I disagree. I am not about to write off an entire industry when our businesses and workers are the best in the world. Instead, we have to improve and strengthen the process by which U.S. companies can fight back against unfair subsidies and dumping.

I am going to be watching this ITC case, and the progress of the multilateral agreements, closely. I urge my colleagues to do the same. Support for steel products and other domestic industries should be a vital part of the economic strategy this country so desperately needs if we are to rebuild our industrial base and establish a framework for fair trade that will take us into the next century.●

TRI-CITY CAMPUS ESTABLISHED

● Mr. GORTON. Mr. President, thank you for allowing me the opportunity to commend the Tri-City community and school leaders on establishing a branch campus of Washington State University. The opening of the Tri-City campus represents the culmination of a decade of efforts to enlarge the former Joint Center for Graduate Studies.

It is especially befitting that the new library was dedicated in honor of the late Senator Max E. Benitz. Senator Benitz had always recognized the value of education and had been a stalwart supporter of the branch campus. It is largely due to his efforts that higher education will meet community needs in the Tri-City area. Senator Benitz's commitment to education has been essential to the success of the region and the State.

On behalf of the citizens of Washington State I applaud the Tri-City community and especially the outstanding service of the late Senator Benitz.●

ENERGY AND PEACE IN THE MIDDLE EAST

● Mr. JOHNSTON. Mr. President, the Senate will soon be considering S. 1220, the National Energy Security Act. Reported by a 17-to-3 vote of the Energy and Natural Resources Committee, S. 1220 is the most comprehensive energy policy bill ever before the Senate.

Amid our disagreement over energy issues, we tend to forget how much energy policy is intertwined with the prospects for peace, particularly in the Middle East.

In an October 3 editorial, the Jerusalem Post highlighted the situation with the cogent observation that—

> The largest transfer of capital in history—the payments for oil made by the West to the OPEC countries—endangers the security of the world. . . . The one country which can dramatically change the situation is the United States. But that country has yet to take meaningful steps to reduce its dependence on imported oil.

The editorial points to S. 1220 as a:

> Comprehensive proposal designed to decrease American dependence on OPEC oil to a minimum. . . . The program's scrupulous attention to environmental considerations is exemplary.

It concludes that—

> The fate of Israel and the region is closely bound to America's ability to resolve its energy dependence problem. Israel's friends must do all in their power to enhance this ability. Not least of the benefits will be that the region's dictators will find the development of weapons of mass destruction beyond their means.

Mr. President, I ask that the entire editorial be printed in the RECORD.

The editorial follows:

[From the Jerusalem Post, Oct. 3, 1991]

ENERGY AND PEACE

If the revelations about Saddam Hussein's nuclear program have done nothing else, they have reaffirmed the truth of the old saw: With enough money, virtually everything and everyone can be bought. In building his nuclear capacity, Saddam could count on the cooperation of every major industrial state. Putting profits before principle, all have openly or tacitly collaborated with him. Nor is it impossible that individual politicians in the Western world were persuaded by personal favors—some of which have been revealed in the unfolding BCCI scandal—to back Saddam despite evidence of his nuclear buildup.

Saddam has already spent at least $4 billion on his nuclear program. The total cost of this project alone is estimated at $10b. Some 20,000 people, including thousands of Western and Russian scientists and managers, are employed in it. Other large sums have been invested in chemical and biological capabilities, and of course in his huge conventional military machine. Yet there seems to be a general reluctance in the West to draw the obvious conclusion from these facts: The largest transfer of capital in history—the payments for oil made by the West to the Arab Opec countries—endangers the security of the world.

There is no equivalent in modern history to the concentration of wealth in the hands of so few. Feudal and dictatorial regimes, bound by neither moral responsibility nor political imperatives, control astronomic amounts of money. They spend relatively little of it on their people; no more than is necessary to keep them pliant. The rest is devoted to the pursuit of weapons. The Gulf war was but a benign foretaste of the havoc that can be wrought by such weapons in the hands of a certified megalomaniac like Saddam Hussein.

Unfortunately, neither governments nor business companies are prone to farsightedness. Middle East oil is the cheapest available, and the oil-exporting regimes are willing to return a sizable part of their huge profits to Western treasuries by buying arms and war technology. This seems like a perfect arrangement. This is particularly true since the myth of Opec's power to embargo oil shipments or control its price has been shattered. What is there to be afraid of, say the experts, if Opec can no longer dictate Western policies? Even monstrous losses in lives and treasure (the Gulf war casualties have amounted to hundreds of thousands, its cost is an estimated $200b.) have awakened only few to the danger of continuing to tolerate Western dependence on Middle Eastern oil.

The one country which can dramatically change the situation is the United States. But that country has yet to take meaningful steps to reduce its dependence on imported oil. In fact, the trend is towards more imports, which already account for about 50 percent of the oil used in America. Half of this oil comes from Opec countries. Correspondingly, domestic production in the U.S. has fallen 20 percent in the past five years. Without a clear, positive, energy policy, American production will diminish further, more cash will flow into the coffers of Middle East dictatorships, and larger conventional and non-conventional arsenals will be built to threaten stability in the region and in the world.

Some of the measures the U.S. can take are included in a bill now before Congress. Named the National Energy Security Act of 1991, and co-sponsored by Senators J. Bennett Johnston and Malcolm Wallop, it is a comprehensive program designed to decrease American dependence on Opec oil to a minimum. Its implementation would staunch the flow of Western money to the Middle East.

The program ranges from raising the standards of vehicular fuel efficiency and promoting the development of alternative motor fuels to mandating energy efficiency standards for industrial, commercial and residential electric equipment. It proposes developing advanced nuclear plants; making more efficient use of water, and enlarging

the strategic petroleum reserve. It recommends oil and gas leasing in the Coastal Plain of the Arctic Wildlife Refuge in Alaska, where the estimate of recoverable oil is 3.6 billion barrels. The program's scrupulous attention to environmental considerations is exemplary.

Strangely, many strong supporters of Israel in Congress, who should be the bill's most avid advocates, are emerging as its fiercest opponents. Some are concerned about its impact on the environment. But only latter-day Luddites and fanatic environmentalists, concerned more with a possible slight inconvenience to caribous than with the fate of mankind, can oppose a program so meticulously designed to avoid environmental damage. Others, who represent states in the Northeast—where the cost of heating in winter is high—fear that reductions in imported oil would cause a steep increase in fuel prices. Compensating for such increases can, of course, be legislated; and no price-rise could match the cost of another war in the Middle East. But it is more likely that a wisely implemented, comprehensive program would ultimately cause a reduction, not an increase, in energy costs.

The fate of Israel and the region is closely bound to America's ability to resolve its energy dependence problem. Israel's friends must do all in their power to enhance this ability. Not least of the benefits will be that the region's dictators will find the development of weapons of mass destruction beyond their means.●

CONFERENCE REPORT—H.R. 2608

● Mr. BREAUX. Mr. President, the conference report on H.R. 2608, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary and related agencies for fiscal year 1992, contains strong language expressing concern over the Federal Maritime Commission's decision not to fill the vacancy of the District Director in its New Orleans District Office. As chairman of the Merchant Marine Subcommittee, the authorizing subcommittee with jurisdiction over the FMC, I too am very concerned that the Federal Maritime Commission has not filled this vacancy.

The New Orleans District Office serves 17 States, including Louisiana, South Carolina, Mississippi, Iowa, Kentucky, Arkansas, and Ohio. The downgrading of the New Orleans office would severely impact these States and, in particular, the Port of New Orleans in my home State.

Accordingly, I strongly support the language contained in the conference report on the fiscal year 1992 Commerce, Justice, State, and Judiciary appropriations bill, which states that the conferees "expect the Commission to fill the New Orleans Director vacancy as soon as possible within the funds provided in this act." The Appropriations Committee has provided ample funds for this position to be filled. Accordingly, I fully expect that the Commission will expeditiously comply with the direction it was given by the conferees.●

THE SENATE NATIONAL GUARD CAUCUS

● Mr. LAUTENBERG. Mr. President, I rise to inform my colleagues that I have joined the Senate National Guard Caucus, a bipartisan group of Senators that seeks to focus attention on issues of importance to the National Guard.

Our Reserve Forces provide a valuable service for our Nation's defense. They are a cost-effective and efficient way of ensuring that our Nation has sufficient force to address potential threats to our national security. The role the reserves played in the gulf war demonstrated the value and importance of the Reserve structure during times of crisis. The Senate National Guard Caucus is dedicated to ensuring that those reserves remain strong and effective.

One of the primary focuses of the Senate National Guard Caucus this year is the reductions proposed by the Pentagon in the fiscal year 1992 budget. I believe those proposed reductions are excessive. As a member of the Senate Defense Appropriations Subcommittee and the Senate National Guard Caucus I have been working hard to preserve the Reserves and National Guard at fiscal year 1991 levels.

We need to ensure that we have enough Reserves to enable the United States to adequately respond during times of crisis. To cut below our current level might invite inadequate protection during national emergencies and local disasters. In light of the proposed cuts in the Active Forces as well, we may need to rely even more on our National Guard and Reserves in the event of future crises.

Cutting the Reserves could also undermine our ability to retain the expertise and experience of active duty members in the long run. Active duty members can now join the Reserves and continue making contributions to our Nation's defense. However, if we dramatically reduce the number of slots in the Reserves, there may not be enough capacity in the future to accommodate these people, ultimately preventing us from drawing on their expertise and knowledge.

Mr. President, the Senate National Guard Caucus will help make the case that the National Guard should not be disadvantaged as we downsize the military and that the Guard continues to play an important role in our Nation's defense. I am proud to be a member of the caucus and to join the other members in addressing this issue that is so important to our Nation's security.●

HONORING ONE OF ILLINOIS' VALUABLE RESOURCES

● Mr. SIMON. Mr. President, I am honored to announce a very special anniversary in the academic world. Beginning in October 1991, the University of Chicago will kick off a year-long celebration of its centennial. Representing the highest degree of quality in education and research, the university stands among the best of this Nation and the world.

Located in the Hyde Park neighborhood of Chicago, the university is home to some of today's finest minds. It is a place where, and to quote a recent article in the Chicago Tribune:

* * * people love knowledge more than anything else. They love it so much that they measure achievement by counting their Nobel prizes instead of Heisman trophies.

The list of achievements by alumni and faculty is extraordinary. Scholars associated with the University of Chicago have affected many different areas of our society. Among its many achievements, the university boasts 61 Nobel laureates who have been faculty, students or researchers there—more than any other university. Although the list is long, let me mention a few: Enrico Fermi and his colleagues, Milton Friedman, Saul Bellow, and James Dewey Watson.

The university is also well known for its graduate level research. It has been a national leader in medical and science breakthroughs, such as those of Willard Libby, who developed Carbon 14 dating, Nathaniel Kleitman, who identified REM sleep, and Albert Michelson, whose measurements of the speed of light made him, in 1907, the first scientist from the United States to win the Nobel prize.

Undergraduates of the University of Chicago learn that knowledge comes from discovery and probing the unknown, not simply accepting what is already held to be true. And, the university also provides a strong foundation to students that gives them the skills to become leaders in whatever field they choose.

But the University of Chicago's achievements reach beyond these prominent individuals. The university seeks to challenge existing traditions and establish new ones. Foremost among them are the establishment of the Chicago Schools of Economics, of Sociology and of Literary Criticism. Many of the university's departments and programs are models for higher education throughout the United States. Through its operation of the largest university press in the Nation, the University of Chicago Press, these developments are spread throughout the world.

However, this school does not exist as an island in the city of Chicago. President Hanna Gray continues a long and strong tradition of reaching out to and interacting with the neighboring communities. The University of Chicago's outreach programs allow neighboring schools to benefit from the vast resources of the university. As President Gray said in a recent interview in the Chicago Tribune, "It is (the university's) obligation to be a good neighbor

and to use its own special form of competence as a good neighbor." Whether on the policy of practical level, the university's faculty, staff and students give of their time and their expertise.

The university has had tremendous leadership from the first president, William Rainey Harper, through to its current president, Hanna Holborn Gray. Hanna Gray is leading the school into the 21st century with the spirit and enthusiasm that carried it to prominence in the last hundred years. She continues to demand excellence from both students and faculty.

I commend and congratulate the University of Chicago for the past 100 years of learning and expanding human knowledge. We are proud to have a university in the State of Illinois that has contributed so much. We appreciate your century of service to the city of Chicago, the State of Illinois, the Nation and our world. We look to a bright future for the University of Chicago and await the discoveries the university will bring to our society.●

PROCEEDINGS OF THE 50TH ANNIVERSARY COMMEMORATION OF THE MASSACRE AT BABI-YAR

● Mr. D'AMATO. Mr. President, I wish to share with my colleagues, excerpts of the 50th anniversary commemoration of the massacre at Babi-Yar. The commemoration took place at Park East Synagogue in New York City on September 15, 1991. Although I would have liked to include the entire proceedings, which I might add are being included in the parliamentary record of the Ukrainian Republic, I have chosen excerpts from each speaker on the commemoration of this atrocity that took place during the Holocaust. The event, sponsored by Rabbi Arthur Schneier, president of the Appeal of Conscience Foundation, was a remarkable assemblance of diplomats, government officials and respected community leaders. It was an honor to participate in this event.

I ask that the excerpts be printed in the RECORD.

The excerpts follow:

EXCERPTS FROM THE 50TH ANNIVERSARY COMMEMORATION OF THE MASSACRE AT BABI-YAR

(By Michael Scharf, President, Park East Synagogue, New York City)

* * * This commemoration of the fiftieth anniversary of the Babi-Yar Massacre is under the sponsorship of several organizations. I would like to name them because of their significance not only in this event but generally. The United States Commission for the Preservation of America's Heritage Abroad, the Permanent Mission of the Ukraine to the United Nations, the National Conference on Soviet Jewry, the Appeal of Conscience Foundation, and the American Gathering of Jewish Holocaust Survivors.

To honor the tragic massacre of Babi-Yar, the Foreign Minister of the Ukraine, His Excellency Anatoli Zlenko has joined us, along with Ambassador Thomas Pickering, Permanent United States Representative to the United Nations; United States Senator Alfonse M. D'Amato; Shoshana Cardin, the Chairman of the Conference of Presidents of Major American Jewish Organizations; Ambassador Yuli Vorontsov, Permanent Representative of the Soviet Union to the United Nations; Yoram Aridor, Permanent Representative from the State of Israel to the United Nations; and New York City Mayor David Dinkins.

Park East Synagogue President MICHAEL SCHARF. It gives me great pleasure at this time—and also a great deal of pride—to introduce Rabbi Arthur Schneier, the Senior Rabbi here at Park East Synagogue. He is also the Chairman of the United States Commission for the Preservation of America's Heritage Abroad and President and Founder of the Appeal of Conscience Organization. Rabbi Schneier.

Rabbi ARTHUR SCHNEIER. Thank you, Michael Scharf, President; distinguished rabbis, clergy, Your Excellencies, my dear friends. Last week was Rosh Hashanah, the Jewish New Year, known also in our tradition as Yom Hazikaron, the day of remembrance. The theme of these days, then, is "We remember." You and I are here today to remember man's inhumanity to man; we remember the slaughter of men, women and children at Babi-Yar.

* * * * *

On September 29, 1941 the Jews were herded together, marched to Babi-Yar—fifteen minutes away from the heart of the city of Kiev—and there the Einsatzkommando, 150 S.S. men, were able within forty-eight hours to destroy the lives of over thirty-three thousand Jewish men, women and children. * * *

* * * A great monument was later built there but with no acknowledgment that the first victims were Jews. * * *

How the world has now changed! On September 29, the official commemoration at Babi-Yar of the event that claimed the lives first of Jews, but also of Ukrainians, Poles, Hungarians, Rumanians, Gypsies will take place with the official support of the government of the Ukraine.

* * * Babi-Yar reminds us that anti-Semitism, when unleashed, can result in terrible consequences, leading to a holocaust. And when anti-Semitism is unleashed, it does not stop with the Jews alone. * * *

* * * We Jews have suffered too much. The Soviet people lost 27 million, and you know the losses that we in America sustained in the defense of democracy. So by being here today we say with one voice that those who abuse freedom to spread venom and plant the virus of hatred must be de-legitimized, must be written out of the human society. * * *

* * * Who would have thought, even a year ago, before Yom Kippur, the Day of Atonement, the flags of the United States, the Soviet Union, the Ukraine and the State of Israel would be standing next to one another in the presence of members of the diplomatic corps from so many different countries. * * * Who would have thought that we would be proclaiming in one voice, "Never again!"

* * * Thank you, and God bless you. It is now a great privilege to introduce Tom Pickering.

Ambassador THOMAS PICKERING. Thank you, Arthur, very much. * * *

In this special time of penitence between Rosh Hashonah and Yom Kippur we are all reminded of the frailty of human character * * * On September 28, notices were posted in Kiev ordering Jews to appear the following morning to be relocated. The next morning masses of Jews appeared at the appointed spot, where they were directed to the ravine at Babi-Yar. They were forced to disrobe and hand over all of their valuables. Then they were shot down by machine guns. According to official reports, in two days of shooting, thirty-three thousand seven hundred and seventy-one Jews were murdered. People of great promise and talent died because a madman in Berlin wanted to exterminate their kind. The Babi-Yar slaughter of innocent people stands as an historic reminder that while human beings are capable of sublime intellectual and artistic achievement, we can sink to depths of violence and destructiveness.

* * * * *

None of us will ever forget the events that occurred at Babi-Yar, and as we look to the future to educate and remember, there are some encouraging signs. * * *

* * * It is a special honor to have been invited here this morning. I thank you. * * *

* * * * *

Rabbi ARTHUR SCHNEIER. There is only one Al D'Amato. He says it as it is. He is a great senator, a man of courage, a great defender of human rights, and a senator who has fought so hard on behalf of the rights of Jews and other religious groups, and a great supporter of the State of Israel, Senator Al D'Amato is a dear friend.

Senator ALFONSE D'AMATO. Rabbi Schneier, Rabbi Marc Schneier, Ambassador Pickering, and to all of our distinguished ambassadors and my colleagues in government in particular, Congressman Green. * * *

* * * The terrible killing of innocent men and women because of their religion and the killing of hundreds of thousands of others is unforgivable. It seems to me in this day and age that we have a long way to go. In a civilized society, in one of the great intellectual capitals of the world, we lack the moral courage to stand up to the forces that epitomize the evil that took place at Babi-Yar. When we do not have the courage as a community, and our elected officials, do not condemn those who preach racial hatred, and bring about violence, then we betray ourselves. We betray this great country, we betray our heritage, our religion, we betray ourselves when we said "Never again." It is about time that we get the courage to stand up and call racism what it is. The violence in our city must end * * *.

* * * * *

I must add that it is grievously inappropriate and ill-timed to put forth the spectre that somehow the United States will hold hostage humanitarian aid, such as loan guarantees to Israel, for the resettlement of Soviet emigrants. It is an ill-conceived plan that can only sow the seeds of discord and heighten the expectations of the radicals, like the PLO, who do not want peace and want to see a continuation of ferment. I pray that we can steer a course that ensures that the United States and Israel do not appear to be anything but totally united in the concept of freedom and Israel's security which must not be impaired. * * *

* * * Never again should the Jewish community take so long to react when they see the rhetoric of hatred, prejudice, and blind violence, no matter to whom it is directed. Let us who have seen and felt the tragedy of silence come together as fighters for our brothers and sisters and for justice. Every one of us is expected to be soldiers for freedom and liberty. Thank you.

Rabbi ARTHUR SCHNEIER. At this time, I would like to call on a beautiful woman of valor, Chairperson of the Conference of Presidents of Major American Jewish Organizations, and Chairperson of the National Conference of Soviet Jewry, Shoshana Cardin. * * *

SHOSHANA CARDIN. Thank you, Rabbi Schneier. Revered clergy, distinguished rabbis, distinguished dignitaries. * * * You have heard of the pronouncement of September 28, 1941. * * *

It read, in part: "Jews who fail to obey this order to appear and are found elsewhere will be shot. All who enter the apartments left by Jews and take their property will be shot." They went just fifteen minutes from the heart of the city to their slaughter. At the end 200,000 Jews were killed by the Nazis and the local militia, this must be recalled for us, as well as for those who were innocent martyrs. * * *

* * * It is our responsibility to be the individual who speaks out, to be certain that such bestiality never, never occurs again. Today we are commemorating those who were written out of history. * * * After fifty years the Ukrainian government is commemorating this horrible atrocity. For the Jews of the Soviet Union, this is their history. * * * It is important for us to stand up and be visible and remember our promise to guard. The people of the Soviet Union and the republics now themselves have an opportunity to stand up against rising anti-Semitism. We have learned that when one people suffers injustice, all people suffer injustice. That is why we're here today. * * *

May this year 5752 be a year in which understanding becomes the by-word, in which peoples who in the past have ignored or not spoken to each other or not communicated will begin to speak with each other and not at each other. * * *

Rabbi ARTHUR SCHNEIER. And now, the Foreign Minister of the Ukraine, Anatoli Zlenko. * * *

His Excellency ANATOLI ZLENKO. Shalom, Rabbi Schneier.

Ladies and Gentlemen, almost two weeks separate us from that tragic date—the fiftieth anniversary of the beginning of one of the most terrible tragedies in the history of world civilization—the tragedy of Babi-Yar. The former outskirt of Kiev occupied a special place in the mythology of Nazi crimes against humanity. The Hitlerites turned it into a dreadful testing ground on which they perfected methods both annihilating those who did not fit into the racial and ideological criteria of fascism.

* * * * *

Babi-Yar ceases to be a black spot in our history. *** The commemorative week in honor of the Babi-Yar victims will be held in Kiev at the end of September and beginning of October. Its diverse program includes an international scientific conference, art shows and book fairs, film festivals and memorial services and processions. ***

*** We do not forget that more than a quarter of the fifty-two million people of the Ukraine are non-Ukrainian. This is why the government is today consistently creating favorable for national revival and cultural and national development of not only Ukrainians but Russian, Jews, Hungarians, Poles, Bulgarians and Germans. ***

The history is Ukrainian-Jewish relations in first and foremost a history of peaceful coexistence, cooperation and common struggle against invaders. The government of the Ukraine—not in words but in deeds—promotes the creation of necessary conditions for the revival of Jewish awareness, culture, schools and the best national traditions. ***

* * * * *

Our meeting in this Temple today is eloquent proof of cardinal changes in the foreign policy of the Ukraine. And, in the Ukrainian and Jewish relations, as well as the United States of America. ***

*** Ladies and gentlemen, our common memory of the Babi-Yar tragedy appeals for a peaceful and mutual good and the co-existence of people of various nationalities. And, may Ukrainians and Jews be an example of good will, tolerance, and cooperation for other nations.

Thank you.

* * * * *

And now, the Permanent Representative of the Soviet Union, Ambassador Yuli Vorontsov. ***

Permanent Representative of the Soviet Union. Ladies and gentlemen, it is a privilege to share in the commemoration of this memorial to a very tragic occasion.

The words Babi-Yar are known to everybody in our country. They are a multi-faceted symbol. First and foremost, these words symbolize the tragedy of the Jewish people. This long historic tragedy of many centuries of persecution and injustices culminated in the Holocaust in the Thirties and Forties of this century.

* * * * *

Another facet of this symbol is that this crime, committed against innocent people engulfed the perpetrators and those who stood by and did nothing to prevent that. * * *

All people, regardless of their nationality, should act together against any crime committed against anyone. A Russian (or Polish) writer, Bruno Yusernsky, who wrote "The Complicity of the Indifferent." He wrote, "Don't be afraid of your enemies. They could only kill you. Don't be afraid of your friends, they could only betray you. But, be afraid of indifferent people." Only because of their indifference, crime is triumphing in the world.

* * * * *

We should look ahead and think, "How shall we insure that this will never happen again?" And, the answer is that we must insure democracy and freedom of speech in our country. This is now being done. I would say in this regard that this is beneficial for the removal of the national bigotry from our life, including anti-Semitism. Knowing our people, I would say that the recent announcements, the recent events, that were treated as a rise of anti-Semitism in our country might not be really the manifestation of the rising national animosities. * * * But, I think that the best way to insure the removal of this bigotry from the relations of people is to cultivate the national respect of one nation to another. I think that one of the best examples of such efforts is the activity of Rabbi Schneier, who encourages national respect and tolerance all over the world. And, I wish success to him and to all other people who are engaged in this noble activity and to insure that such tragedies will never happen again. Thank you.

* * * * *

Rabbi ARTHUR SCHNEIER. It gives me great pleasure to call upon the Permanent Representative of the State of Israel, His Excellency Yoram Aridor, who served as former Prime Minister of Israel.

His Excellency YORAM ARIDOR. Rabbi Schneier, distinguished dignitaries and guests.* * *

We come here today to remember the events half a century ago, half a world away—we remember because we dare not forget we are a people whose history is saturated with suffering. And, it has been our constant awareness of the past that has assured us of a future. It was a Babi-Yar that the hopes and dreams of a generation were violently extirpated in a fit of madness and bloodshed.

* * * * *

Babi-Yar was only one of the thousands of sites of Jewish martyrdom during those bleak and awful years. Yet, it stands out in our minds as a symbol of cruelty and barbarism. Babi-Yar is a grave. *Only one* grave of tens of thousands of human beings. It is a symbol, for us, of what the people were forced to endure in that abyss of despair known as Nazi Europe.

* * * * *

For, even in death, the victims of Babi-Yar were denied any sort of recognition of even dignity. The world simply ignored these Jews and their memory. But, those days have past. And, the family of evil is being replaced by another family—a family of truth and Democracy. Now, at last, the victims of Babi-Yar will receive the memorial, the monument, so long denied the.

* * * * *

Our mandate today is clear. For there is no better means of commemorating the dead than reaffirming life. And, by taking hundreds of thousands of Soviet-Jewish immigrants, themselves the grandchildren of the generation of Babi-Yar—the State of Israel is creating a living monument to those who perished. * * *

* * * * *

One really can not understand Israel without the Babi-Yars. And, one can not understand the world with the Babi-Yars. Israel is based upon the most noble of aspirations—namely brotherhood and concern for one's fellow man. But, a world in which Babi-Yars are allowed to take place, without the slightest protests, is a barren world, a moral wasteland.

* * * * *

Let us, therefore, commit ourselves today to never repeat that fatal mistake again. Let us commit ourselves to building a world free of Babi-Yars, free of immoral silence. We owe it, not just to the victims, but to ourselves, and to future generations.

* * * * *

Rabbi ARTHUR SCHNEIER. It is a great privilege to greet a friend, the Mayor of the City of New York, Mayor David M. Dinkins.

Mayor DAVID DINKINS. Thank you very much, good friend. Shalom everyone and shana tovah on this solemn occasion—as we commemorate the cold-blooded murder at Babi-Yar of over 200,000 Jews, Ukrainians, and other innocent victims of Nazi violence.* * *

* * * * *

After the Holocaust * * * The world understood that future generations would have to learn the truth of the concentration camps, where people were tortured and slaughtered because of their Jewish identity. After the Holocaust, the world understood that the danger to humanity, if we were ever allowed to forget, was immense and unbearable. The ugly concentration camps, then have been preserved. In 1986, I had the sobering experience of visiting the one at Dachau. It was a visit that opened vast reservoirs of sorrow in my soul—to think of the families torn asun-

der and of the little children cruelly murdered.* * *

* * * * *

While this is the American commemoration of the tragedy of Babi-Yar, there will also be a Ukrainian commemoration of Kiev from September 29th to October 6th.

Our world is changing rapidly, and the Republics like the Ukraine that long sought independence from the Soviet Union have now reaped the rewards of their struggle. Let me say that freedom is always a cause for rejoicing. And, I congratulate the Ukraine on its independent status.

* * * * *

The Jewish New Year has just been ushered in. This coming Wednesday is Yom Kippur, a day of fasting and reflection for the Jewish people. It is my wish that the entire city join our Jewish brothers and sisters in their reflection on that day. Let everyone of us evaluate how good a human being he or she has been during the past year. Let every one of us give an honest accounting of himself or herself, and let us resolve to improve in the upcoming months to be rigorous in what we demand of ourselves in terms of gracefully understanding and appreciating the differences that define us.

* * * * *

All efforts by the Nazis to cover up mass murder have failed, the world knows what happened at Babi-Yar, and the world mourns these innocent victims. We will always mourn them and regret the loss of their contributions to their families, to their countries, and to the world. * * * ●

HONORING FALLEN FIREFIGHTERS

● Mr. McCAIN. Mr. President, I ask that we pause for a moment today to honor the 105 career and volunteer firefighters who lost their lives in the line of duty during 1990. These brave and valiant individuals deserve our respect, admiration, and eternal thanks.

Mr. President, I also ask that we express our sympathy to the families of these brave men and women of the fire service. Our prayers are with them. We share in their loss.

Throughout the history of our Nation, the men and women of the fire service have given so unselfishly of themselves to serve our communities. During this, National Fire Fighters Week, and every week, we need to demonstrate our continued thanks to our firefighters for the hard work they do.

Mr. President, in 1990 six Arizona firefighters fell in the line of duty. They are Ms. Sandra J. Bachman, Mr. Joseph L. Chacon, Mr. Alex S. Contreras, Mr. James L. Denney, Mr. James E. Ellis, and Mr. Curtis E. Springfield, all of the Arizona State Land Department. These individuals were recently honored at the National Fallen Firefighter's Memorial in Emmitsburg, MD on Sunday, October 13, 1991.

Mr. President, our hearts and prayers are with these great Arizonans and their families. These courageous men and women are heroes who command our respect and honor. We will forever owe them a debt of gratitude.●

BEST IN THE NATION

● Mr. SIMON. Mr. President, U.S. News & World Report recently surveyed more than 1,500 physicians in 15 specialties to identify the Nation's best hospitals. The 965 doctors who responded gave high ratings for those 15 specialities to 45 hospitals out of more than 6,700. I am pleased and proud to report that the hospital they ranked the best in the Nation for rehabilitation is the Rehabilitation Institute of Chicago.

Dr. Henry Betts, the medical director and chief executive officer of the Rehabilitation Institute of Chicago, has been a national leader for many years in the field of rehabilitation. He is also a champion of the rights of individuals with disabilities to live with dignity and to have equality of opportunity. It is no surprise that an institution headed by Dr. Betts would give people with disabilities the best possible chance for rehabilitation and a return to productive participation in the community.

I commend Dr. Betts and all of the staff at the Rehabilitation Institute and congratulate them for being recognized by their peers for their outstanding work. I ask to print in the RECORD the article from U.S. News & World Report, which suggests ways people can choose the rehabilitation facility that is best for them.

The article follows:

REHABILITATION

REHABILITATION INSTITUTE OF CHICAGO 54%; CRAIG HOSPITAL, ENGLEWOOD, COLO. 35.5%; MAYO CLINIC, ROCHESTER, MINN. 32.5%; UNIVERSITY OF WASHINGTON MEDICAL CENTER, SEATTLE 32%; RUSK INSTITUTE OF REHABILITATION MEDICINE, NEW YORK 27.5%; BAYLOR INSTITUTE FOR REHABILITATION, DALLAS 25.5%; INSTITUTE FOR REHABILITATION AND RESEARCH (TIRR), HOUSTON 21%

It could be a back injury, a stroke or an accident that ended in paralysis. Every year, some 300,000 people must learn how to walk, talk or move all over again. The health professionals who come to their aid work at some 135 rehabilitation hospitals and 672 rehab units in general hospitals.

Picking the best starts with seeking the opinion of an expert like the head of a major medical school's department of rehabilitative medicine. Lists of rehab programs nationwide can also be obtained from the National Association of Rehabilitation Facilities, (703) 648-9300; the National Head Injury Foundation, (202) 296-6443, and the National Spinal Cord Injury Association Member Hotline, (800) 962-9629.

"The most important question to ask is how many people with injuries similar to your own the hospital has treated in the last year or two," says Henry Betts, medical director of the Rehabilitation Institute of Chicago. While there is no magic number, if the answer is less than a dozen or so cases, says Betts, you might want to look elsewhere.

He also suggests spending a couple of hours talking to a hospital's staff and taking a thorough tour, paying close attention to the physical-therapy facilities. How modern are they? How cheerful and upbeat? Some patients spend two to four hours daily for months in these surroundings. An onsite lab that experiments with prosthetic devices and aids for the disabled signals a sensitivity to giving patients the latest care around. Accreditation by the Commission on Accreditation of Rehabilitation Facilities, (602) 748-1212, is a good sign as well.●

THE C-17

● Mr. D'AMATO. Mr. President, on October 3, as part of the hearing on the McDonnell-Douglas Corp. being conducted by the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, Neal Curtin, Director, Planning and Reporting, National Security and International Affairs Division, General Accounting Office [GAO] submitted testimony entitled, "Defense Industry: Issues Concerning Five Weapon Systems Provided or Developed by McDonnell Douglas Corporation" [GAO/T-NSIAD-92-1]. Mr. Curtin's statement makes for interesting reading, and, while I will focus on those of his remarks that relate to the C-17, I ask unanimous consent that the full text of the report be printed in the RECORD immediately after my remarks.

For a program funded through the third production lot, there is a remarkable degree of turbulence in production. According to Mr. Curtin's statement:

Currently, the major challenges for Douglas are improving production efficiency and quality and completing avionics software development. The work performed continues to be less than the work scheduled, and the actual cost of the work performed is greater than planned. Major problems include the amount of out-of-position work, which creates production inefficiencies, and the amount of rework and repair which indicates quality problems.

Mr. Curtin's testimony indicates that "about one-third of the production hours for each aircraft are spent on rework and repair".

Of perhaps more immediate concern, the GAO notes that:

[O]riginally, software on the first test aircraft was intended to support all avionic functions. However, because of software development problems and schedule delays, in late 1988, the Air Force reduced software requirements for the test aircraft. Douglas delivered the test aircraft with only enough software to support the first 100 hours of the flight test program. The Air Force waived capability shortfalls in 23 avionics and flight control subsystems on this aircraft.

As of October 3, the first C-17 has already logged 11.5 hours of flight. What happens to this aircraft when it reaches the 100 hour mark? Will it be grounded? If not, how will the deficiencies in the software be corrected? Presumably, correction will require some sort of retrofit. What will this cost? Who will bear the cost? How long will it take? What effect will this have on the flight test program?

Mr. Curtin reports that:

Douglas anticipates that most of the software deficiencies will be corrected by improvements scheduled to be included on the first production aircraft.

Is this, in fact, true? Will the deficiencies be corrected in time, even assuming yet another slip of first flight of the first production aircraft to March 1992? And if not, are we ready to continue to procure C–17's when even a rudimentary flight test program cannot be maintained?

The question remains, can McDonnell-Douglas produce the remaining 119 C–17s in a timely, competent, and affordable way? The report by the GAO casts doubt. The utmost caution appears to be in order. I look forward to a conference resolution on the C–17 along the lines of the Senate Armed Services mark both in terms of a return to event-based contracting and close scrutiny of the tradeoffs between capability and cost made by the Air Force. Defense dollars are too precious to squander on the basis of momentum.

The report follows:

ISSUES CONCERNING FIVE WEAPON SYSTEMS PROVIDED OR DEVELOPED BY MCDONNELL DOUGLAS CORP.

(By Neal P. Curtin, Director, Planning and Reporting, National Security and International Affairs Division)

Mr. Chairman and Members of the Subcommittee:

As you requested, we are here today to provide information on several weapon systems involving the McDonnell Douglas Corporation. In particular, we will discuss the A–12 Avenger medium attack aircraft, C–17 transport aircraft, T–45 Goshawk trainer aircraft, the Apache helicopter, and the Longbow Apache helicopter.

RESULTS IN BRIEF

Each of these systems has experienced significant technical or production problems and often major cost increases. In fact, problems in one system—the A–12 Avenger—were of such magnitude that the Department of Defense cancelled the program.

The problems we note with the A–12, the C–17, and the T–45 involve cost overruns in their fixed price development contracts. Once the cost has exceeded the ceiling price of a fixed price contract, the contractor must bear any additional cost. On these three contracts, the combined overrun is estimated by some analysts to reach as high as $2.7 billion. In each of these programs, we have also noted technical or production problems that have contributed to cost problems and caused schedule delays.

The contract for the A–12, which was being developed by a team from McDonnell Douglas and General Dynamics, was terminated for default. McDonnell Douglas has already recognized a loss of $350 million and acknowledges that, unless its challenge to the government's determination of termination for default is upheld, it may have to recognize an additional $850 million loss. For the C–17, estimates of overrun on the $6.7 billion full-scale engineering development contract range from a low of about $350 million by the contractor to a high of about $1.4 billion by the Office of the Secretary of Defense (OSD). OSD has also estimated that design changes, which could require contract price adjustments, could push the development contract cost to $9 billion. On the T–45, the contractor estimates that costs will exceed the $512 million ceiling by about $110 million.

It should be noted that the contractor has filed or plans to file claims against the government on each of these programs. If upheld, these claims which could cost the government hundreds of millions of dollars and could result in the Corporation at least breaking even on the A–12, C–17, and T–45 contracts.

The Apache helicopter is a mature system that has been plagued with logistical support, reliability, and other problems that have yet to be resolved even though the system has been in production since 1982. We have brought the Apache's problems to your attention several times in the past. To a large extent these problems originated in the decision to proceed to full-rate production despite known technical problems and warnings from Army test and evaluation agencies of serious logistical support problems. Lessons learned from the Apache, if properly applied to the development of the Longbow, could prevent a recurrence of those technical and logistics problems.

BACKGROUND

By almost any measure, McDonnell Douglas is the largest U.S. defense contractor, producing a wide variety of weapon systems and components for each of the military services. Besides the programs highlighted in my statement, McDonnell Douglas produces, for example, the F/A–18 Hornet, the F–15 Eagle, the KC–10 Extender, the Harrier II, and various missiles and electronic systems.

The McDonnell Douglas Corporation is a major participant in both the defense and commercial aerospace industries. The corporation along with its subsidiaries and divisions, operates principally in four industry segments to provide (1) combat aircraft, which accounted for about 36 percent of the corporation's revenues in 1990 and which have historically contributed significantly to corporation profits; (2) military and commercial transport aircraft (built by the Douglas Aircraft Company), which accounted for about 36 percent of the corporation's revenues in 1990; (3) missile, space, and electronic systems, which accounted for about 20 percent of Corporation revenues in 1990; and (4) financial services and other business, which accounted for the remaining 8 percent. In 1990, government contracts accounted for about 55 percent of McDonnell Douglas' total revenues.

McDonnell Douglas reported net earnings of $306 million in 1990, $250 million in 1989, and $350 million in 1988. However, 1990 net earnings reflect a one-time upward adjustment that resulted from a favorable pension settlement. Without this adjustment, the corporation would have reported a $105 million loss for 1990, and a third year of declining earnings. These earnings were on revenues of $16.2 billion in 1990, $14.6 billion in 1989, and $14.4 billion in 1988. The company attributes its weak earnings to significant capital investments to bring large development projects to production over the past several years.

According to the corporation's 1990 financial statement, major ongoing development efforts on the MD–11 commercial passenger plane and C–17 military transport have strained facilities and systems of the Douglas Aircraft Company and caused delays in meeting schedules. The company's transport aircraft business incurred an operating loss of $177 million in 1990, largely as a result of increased borrowing for the MD–11. The corporation has acknowledged that management problems have contributed to schedule delays at Douglas Aircraft. In an attempt to fix these problems, the company has replaced numerous managers and reduced total employment by about 15,000 in an effort to reduce costs by $700 million.

A–12 AVENGER ATTACK AIRCRAFT

In 1988, the Navy awarded a contract to a team comprised of General Dynamics and McDonnell Douglas for full-scale development of the A–12 Avenger medium attack aircraft to replace the A–6E attack aircraft. The development contract was a fixed price incentive contract with a target price of $4.38 billion and ceiling price of $4.84 billion. The contract included development and delivery of eight full-scale development aircraft and four test articles.

In April 1990, at the conclusion of the Major Aircraft Review, the Secretary of Defense informed Congress that the A–12 program would meet its flight, schedule, and performance estimates. He also testified that, due to budget constraints, the A–12 requirements would be reduced from 858 to 620 aircraft. Shortly afterward, the contractors advised the Navy that the scheduled date the first flight had slipped significantly, the full scale development effort would overrun the contract ceiling by an amount that the contract team could not absorb, and certain performance specifications of the contract could not be met.

On July 9, 1990, the Secretary of the Navy ordered an inquiry into the variance between the program's status and presentations to the OSD on behalf of the Navy, during the Major Aircraft Review. The investigation determined that the Navy and OSD had information that should have been considered, but was not, during the Major Aircraft Review. Three high-level Navy officers were removed from the project.

On January 7, 1991, the Navy terminated the contract for default. The termination was based on the fact that the contractors could not complete the work within the contract schedule and deliver an aircraft that could meet the contract requirements. The problems in developing the A–12 revolved around excess weight caused by the thickness of the composite material necessary to provide the required structural strength, according to the Navy inquiry report. The weight growth resulted in late release of engineering drawings which delayed tool design and fabrication, and continually delayed production.

At termination, just under $3 billion had been spent on the program. Research and development and miscellaneous support costs accounted for about $300 million of the amount spent. The remaining $2.7 billion was paid to the contractors for the fullscale development effort and two production options. The Navy demanded $1.35 billion be returned. That amount represented progress payments for work that had not been accepted as of the date of termination.

As you are aware, on February 5, 1991, the Navy and DOD agreed that the contractor could defer repayment of the $1.35 billion until litigation over the termination was resolved or a negotiated settlement was reached.

On June 7, 1991, the contractors filed a lawsuit asking that the court reform the contract to a cost reimbursement plus fixed fee type. The contractors have also asked that the court change the termination for default to a termination for convenience, which would mean that the contractors could be entitled to additional compensation, and that the government be barred from collecting the $1.35 billion in unliquidated progress payments.

C–17 MILITARY TRANSPORT

The C–17 is designed to airlift substantial payloads over long ranges without refueling. It is being developed under a fixed-price de-

velopment contract that includes two production options for a total of 6 aircraft. In addition, a fixed-price contract for a third production lot of 4 aircraft was awarded at the end of July 1991. The ceiling price of the development contract is $6.65 billion. The Lot 3 contract has a target price of $1,026 million and a ceiling price of $1,209 million.

The Air Force originally planned to buy 210 C–17 aircraft. However, in April 1990 the Secretary of Defense reduced the program to 120 production aircraft at a currently estimated cost of $35.3 billion.

In August 1989, we reported that the C–17 program faced significant schedule, cost, and performance challenges. At that time, Douglas had missed major assembly milestones because of late engineering drawings and late delivery of tools and parts. Also, problems in the development and testing of the aircraft avionics and the company's management of subcontractors were contributing to cost, schedule, and performance problems.

As a result of these problems, the milestone of completing assembly of the first aircraft, originally scheduled for January 1990, had slipped to December 1990. Further, the date of first flight was rescheduled from August 1990 to June 1991, and first flight of a production aircraft slipped to September 1991. On September 25, 1990, the Air Force and Douglas signed a contract modification that in essence recognized the slipped schedule. However, first flight of the test aircraft, did not occur until September 15, 1991.

The Air Force and Douglas have agreed to a new delivery schedule that became effective when the Lot 3 contract was awarded. However, it does not appear that that schedule will be met, and the first flight of a production aircraft, scheduled for December 1991 under the new agreement, may not occur until about March 1992.

In June 1990, we testified before the Subcommittee on Projection Forces and Regional Defense, Senate Armed Services Committee, that the schedule delays and resulting funds buildup provided the opportunity to defer the proposed fiscal year 1991 buy of two C–17 aircraft and reduce the advance procurement funds for six aircraft in fiscal year 1992. This step would help to limit production commitments until the critical elements of a realistic and achievable flight test program were completed.

Prior to our June testimony, the C–17 Administrative Contracting Officer (ACO) had requested that Douglas submit a revised estimate of the cost at completion (EAC). The ACO was concerned because the EAC is used to determine progress payments. Although Douglas claimed that the contract would be completed at ceiling price, the ACO estimated that the actual cost to complete would be about $7.1 billion. That estimate has increased and the ACO is currently using $7.3 billion to determine the level of progress payments to provide the contractor. An EAC that exceeds the ceiling on the contract results in the application of a loss ratio on progress payments. That is, the amount of the progress payment is reduced to reflect a portion of the expected loss. As of August 1991, the company had billed about $530 million in work that the ACO has not approved for payment.

Since our 1989 report, Douglas has continued to have problems meeting schedules. Currently, the major challenges for Douglas are improving production efficiency and quality and completing avionics software development. The work performed continues to be less than the work scheduled, and the actual cost of the work performed is greater than planned. Major problems include the amount of out-of-position work, which creates production inefficiencies, and the amount of rework and repair which indicates quality problems.

The dollar value of rework and repair is decreasing on each successive aircraft. However, rework and repair costs continue to rise when measured against every 1,000 hours of labor, about one-third of the production hours for each aircraft are spent on rework and repair. The dollar decrease results from the decreasing number of hours required to build each successive aircraft.

Another major problem area has been avionics software development. Originally, software on the first test aircraft was intended to support all avionic functions. However, because software development problems and schedule delays, in late 1988, the Air Force reduced software requirements for the test aircraft. Douglas delivered the test aircraft with only enough software to support the first 100 hours of the flight test program. The Air Force waived capability shortfalls in 23 avionics and flight control subsystems on this aircraft. Douglas anticipates that most software deficiencies will be corrected by the improvements scheduled to be included on the first production aircraft.

At the direction of Douglas Aircraft and McDonnell Douglas management, an internal, independent team reviewed the C–17 program and, in June 1991, made 23 recommendations for needed improvements. These included increasing the emphasis on quality and reducing out-of-position work. The team stated that "management needs to stress immediately to the entire C–17 program team a change in focus from a schedule priority to a quality priority." In our opinion, the degree of improvement that can be expected on the C–17 program is directly tied to the success Douglas has in implementing those recommendations.

T–45 GOSHAWK TRAINER AIRCRAFT

The T–45 Goshawk aircraft is the major component of a flight training system that the McDonnell Douglas Corporation is developing for the Navy. The T–45, a derivative of the British Aerospace Hawk, will replace the T–2 and TA–4 aircraft currently used for intermediate and advanced jet flight training. Full-scale development began in October 1984 with award of a $512 million firm-fixed-price contract. Two production lots for a total of 36 aircraft, were subsequently added to the contract.

In 1988, during initial flight tests and after contracting for the first production lot of 12 aircraft, the Navy discovered that the aircraft's design was seriously flawed. The Navy concluded that the aircraft was not suitable for use in a carrier environment and could not be approved because of safety deficiencies.

After the test, OSD restricted the obligation of procurement funds for the second production lot, but this restriction was lifted in December 1989. At that time, the Defense Acquisition Board endorsed a program restructuring that stretched production of the second lot of 24 aircraft over 2 years and targeted initial operational capability for June 1991. However, that schedule became obsolete shortly after the Board's review when the contractor announced the move of its production facilities from California to Missouri.

By the end of December 1990, test results suggested that the 1988 deficiencies were being resolved, and the Navy committed to a new program schedule that moved initial operational capability to November 1992—which not only accommodated the move of the production facilities but reflected a sharp reduction in the concurrency of the program. This latest restructuring has not yet been approved by the Under Secretary of Defense for Acquisition and a comprehensive agreement on contract price adjustments remain to be worked out.

The most recent System Acquisition Report estimates T–45 costs at about $6.7 billion for 300 production aircraft and 32 simulators. However, the Navy expects that the Secretary of Defense will soon approve a scaled-down program of 268 production aircraft and 24 flight simulators. Navy officials indicate that the total acquisition cost will remain about the same.

The contractor's estimate at completion for the development effort is $622 million, $110 million over the original contract price. However, the extent to which McDonnell Douglas will have to absorb costs beyond the fixed contract price is uncertain. A number of configuration changes were developed and are to be incorporated in the production aircraft. Currently the Navy is negotiating the amount of price adjustments for configuration changes where liability is clear. Navy officials are also studying a related claim for an upward price adjustment of $281.5 million, but have not yet acknowledged any liability. The Navy has targeted the end of calendar year 1991 to resolve the pricing questions.

APACHE HELICOPTER

The Apache is the Army's primary attack helicopter, designed for high-intensity battle against armored forces. Its forte is flying at night and destroying tanks with its laser-guided Hellfire missile. Starting in 1982, the Army negotiated a series of firm-fixed-price contracts to buy 807 Apaches at a total acquisition cost of $11.6 billion, or about $14.4 million per aircraft.

As you know, we have done a considerable amount of work on the Apache in the last 3 years. In April and September 1990, we reported that the Apache experienced a fully-mission-capable rate of 50 percent from January 1989 through 1990 which was far short of the Army's goal of 70 percent. Rates were low despite favorable operating conditions, such as few flying hours, contractor support, and infrequent weapons firing.

During Operation Desert Shield, the Army reported that Apache helicopters were surpassing Army availability goals, and in September 1990, you asked us to take a firsthand look at the availability of the Apache in Saudi Arabia and actions taken to achieve high availability during Operation Desert Shield.

In February 1991, we testified that the high availability rates were attributable to (1) extensive preparations made prior to deployment, (2) the collocation of several battalions to increase the sharing of assets, (3) limitations placed on the Apache's flying hours, and (4) the overall high priority of maintenance support in theater.

Army efforts to improve the reliability of the selected hardware components have been ongoing for several years with varying degrees of success. The Army has made progress in resolving some issues on component reliability. Test results are encouraging on components such as the tail rotor swashplate. The Army is encouraged with testing results on other components such as the main rotor blades. However, problems persist on components such as the 30-mm gun, the target acquisition designation sight, and the shaft-driven compressor. The Army has numerous corrective actions underway to improve these components and has

acknowledged it will be several years before all fixes are incorporated on fielded aircraft. We issued a report, today, Apache Helicopter: Reliability of Key Components Yet to be Fully Demonstrated (GAO/NSIAD-92-19, Oct. 3, 1991), on the status of several key problem components.

LONGBOW APACHE

The Army plans to modify 227 Apache helicopters to a new configuration called the Longbow Apache. The modification program, which will cost about $5.4 billion, will add a new fire control radar to detect, classify, and prioritize targets and indicate when hostile radar has locked on the Longbow Apache. In addition, the program includes a new Hellfire missile with a radio frequency "seeker" for locking on to targets. The Apache airframe will be modified to accommodate the Longbow enhancements.

A cost-plus-incentive-fee contract for full-scale development of the Longbow Apache was awarded to McDonnell Douglas Helicopter Company on August 30, 1989. The contract, which has a value of $194.7 million, is to run through June 1995. McDonnell Douglas Helicopter Company, the prime contractor of the Apache, is developing the airframe modifications and is responsible for the total integration of the airframe, fire control radar, and missile systems. The Longbow Apache Program Manager told us that the full-scale development contract is about 1 percent behind schedule, but he does not view this as a significant problem.

In September 1990,[1] we expressed reservations about the Army's plan to add the Longbow to the Apache. We recommended it defer production of the Longbow modification until clearly demonstrating that (1) it has overcome the logistical support problems with the current Apache and (2) the Longbow will not exacerbate the Apache's logistical support problems.

DOD and Congress have also expressed concern. The Defense Acquisition Board, in December 1990, concluded that planned improvements to the Apache's reliability should be verified before proceeding with the Longbow Apache modifications. Congress, in the Conference Report on the 1991 Defense Authorization Act, barred the Army from obligating more than half the $159 million in authorized Longbow funds until the Secretary of the Army developed a comprehensive modernization program for the Apache fleet. The plan for that program was delivered to the Chairman of the Senate and House Armed Services Committees on March 12, 1991.

The Army's plan for acquiring and fielding the Longbow Apache includes several features, which if adhered to, should help avoid the problems experienced in fielding the Apache helicopter. Chief among these features is the Army's plan not to begin production of the Longbow Apache until the new radar technology has been demonstrated to work. As a result, the Army will delay production of the airframe modifications until development of the fire control radar, the RF Hellfire missile, and the airframe modifications are complete.

While the acquisition plan for the Longbow Apache appears on track, the Army plans to use outdated and narrowly defined Apache standards to measure Longbow Apache system reliability. Using these standards will likely yield the same results as it did with the Apache—an enhanced helicopter that is not adequately supported. Further, the Army continues to exclude important data when calculating the man-hours that will be needed to maintain the Longbow Apache.

OVERALL OBSERVATIONS

With the exception of the Longbow Apache, which is early in development, each of the systems we have discussed has experienced technical problems and/or cost overruns. McDonnell Douglas has recently lost competitions for the new Light Helicopter and the Advanced Tactical Fighter. McDonnell Douglas is not alone in experiencing performance, cost, and schedule problems. However, to prevent the problems we have noted with these systems, the company needs to provide the kind of management that can better assure quality products within the cost constraints.

One final observation. We have been critical of DOD for several years over the tendency to have too much concurrency in its weapon systems. By this I mean the rush to produce and field systems before adequate testing has assured that the system will fulfill its identified requirement. Concurrency has exacerbated the problems caused by system technical problems and contractor management inadequacies. The easing of world tensions should allow these systems to be more fully tested before committing to production.

Mr. Chairman, that completes my statement. I would be happy to answer any questions you may have.●

[1] Apache Helicopter: Serious Logistical Support Problems Must Be Solved to Realize Combat Potential (GAO/NSIAD-90-294, Sept. 28, 1990).

THE PUBLIC SERVICE SCHOLARSHIP ACT OF 1991

● Mr. SEYMOUR. Mr. President, I rise today in support of S. 1814, the Public Service Scholarship Act of 1991, introduced by Senator STEVENS, and I on October 7. This legislation is an Administration proposal, and I commend the President for his foresight and concern in trying to improve the quality of our Federal work force.

The concept of public service and the dedication that it requires have long been acknowledged in this country. Unfortunately, to those in recent generations, it has lost some of its shine and history. No longer, it seems, do the "best and brightest" aspire to such an honorable career and many are overtly hostile to the idea.

Some prospective recruits are demoralized by the lack of prestige and public trust in a civil service career, caused in part by the incessant bureaucracy bashing rhetoric of politicians. Other young graduates are repelled by the slow and complicated application process. And perhaps most importantly, many college students do not want to accept the comparitively low pay of a Federal job.

The National Commission on the Public Service convened in 1987 to study the Federal recruitment crisis. Under the very able leadership of Paul Volcker, the distinguished former Federal Reserve Chairman, the Commission released in early 1989 a report entitled "Leadership for America: Rebuilding the Public Service."

The Volcker Commission made a variety of recommendations for this rebuilding. These recommendations centered around three themes that pervaded the entire report: the importance of leadership, the need to broaden the Government's talent base, and the necessity for a competitive pay/performance scale.

The Stevens-Seymour bill, along with the Pay Reform Act of 1990 and the President's renewed emphasis on ethics in Government, is intended to put these recommendations into action. As noted by the Volcker Commission, our legislation reflects the need to broaden the government's talent base by establishing a Public Service Scholarship Program under the guidance of the Office of Personnel Management.

Our legislation goes straight to the issue of focusing on the recruitment of younger adults by allowing agencies to select candidates for 1- to 4-year academic scholarship programs. In return, the candidates, upon graduation, would serve at the agency 18 months for each academic year of scholarship assistance provided.

This bill does not compel the participation of agencies in this program. It only authorizes them to make scholarship payments from the appropriations available for salaries and other expenses. Furthermore, if candidates fail to complete their degree or their time of government service, they must repay the entire amount of the agency's scholarship assistance.

Through this program, the truly "best and brightest" will bring their skills to public service and directly experience the rewards and honor of such a career. Even if they decide not to remain in government service, the skills and understanding that they acquire will assist their communities in making the Federal Government work for them.

The Volcker Commission report is a solid, thoughtful piece of work and its Public Service Scholarship Program deserves swift enactment. I therefore urge all my colleagues to join Senator STEVENS and me in supporting this meaningful legislation.●

CALLING FOR SUPPORT FOR THE CUBAN DEMOCRATIC CONVERGENCE MOVEMENT

● Mr. D'AMATO. Mr. President, I rise today to call for support for the Cuban Democratic Convergence, a coalition of a half-dozen human rights organizations in Cuba. These brave people are taking their lives in their hands by calling for the end to communism in Cuba, one of the last totalitarian Communist strongholds in the world. Their call for democracy is a brave act in a land deprived of freedom and one that deserves our support.

Fidel Castro, the brazen dictator of Cuba, has flagrantly violated human rights and driven thousands into exile.

He has participated in the incitement of revolution in the Caribbean, South America, and Africa, and has played a serious role in drug trafficking throughout the hemisphere and even into the United States.

This brutal enemy of freedom has sworn to hang on, despite persistent calls for democracy. His Fourth Cuban Communist Party Congress has declared that it will only seek to modernize the economy, not the system. Castro clearly is not getting the message. The age of communism is over.

Castro's time has come. Now we must support those people who have demonstrated that Cubans have had enough of communism, enough of Castro. His stubborn refusal to surrender to the forces of freedom is unfortunate, but the wishes of the Cuban people must prevail. It is our moral obligation to support those who seek freedom and democracy and an end to Castro's Communist Cuba. We must send the message to Castro: The time for democracy in Cuba is now.●

CONGRATULATING THE NOBEL PEACE PRIZE WINNER

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 195, a resolution congratulating the latest Nobel Peace Prize winner introduced earlier today by Senator MOYNIHAN and others.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 195) to congratulate Daw Aung San Suu Kyi of Burma on her award of the Nobel Peace Prize.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

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

THE AWARD OF THE NOBEL PEACE PRIZE TO AUNG SAN SUU KYI

Mr. MOYNIHAN. Mr. President, it is with great joy and encouragement that I rise to acknowledge before the Senate that Daw Aung San Suu Kyi of Burma was yesterday awarded the Nobel Peace Prize.

Certainly, there has never been a more deserving recipient of this award than Aung San Suu Kyi, nor a people more in need of the spiritual support it provides than those of Burma. They have both suffered greatly, and continue to do so even as I speak. And they have suffered in relative anonymity. The world's attention has not been on Burma, the world's press has been kept away from Burma. that has all ended now.

The world's most prestigious award for peace, for human rights, for freedom, has now gone to the individual who most represents those qualities in the Burmese people. Aung San Suu Kyi's life is one of inspiriting poetry. She is the daughter of Burma's own postwar independence hero, Aung San, who was assassinated in 1947, just as Burma achieved its independence from Britain. A hero and a father who Aung San Suu Kyi never knew, being only 2 years old at the time of his death.

Some 40 years later, having returned to Burma in 1988 to care for her dying mother, Aung San Suu Kyi found herself becoming the center of a spontaneous and peaceful uprising against a brutal military dictatorship that held power since 1962. She did not seek the role of opposition leader, the opposition sought her. More, it gravitated to her as it did her father 40 years earlier.

The military junta in Burma murdered demonstrators, who were on the streets of Burma's cities by the millions, until their peaceful rebellion was crushed. Tiananmen Square happened in Burma first. But as CNN was never allowed into Burma as it had been into Beijing, there were few reporters to record the massacres and atrocities.

And as the voice of Aung San was silenced 40 years ago, the junta has sought to silence the voice of courage, dignity, and peace that his daughter, Aung San Suu Kyi, offered her struggling people. They have placed her under the strictest form of house arrest since July 1989. No family or friends may visit. Yet Aung San Suu Kyi speaks as eloquently and movingly as ever in her silence and arrest for the past more than 2 years. Her people hear her voice and feel her spirit. The junta remains terribly frightened of her.

Today the world knows much better what she has sought to say. The people of Burma live under the most terrible of repression. All sorts of atrocities: arrest, torture, murder, even genocide against minorities.

We in the Senate have followed her struggle since 1988 and pledged our support. We have withheld aid from the regime and given some, albeit modest amounts, to the refugees who have fled the regime. We have imposed an arms embargo and taken economic actions against the regime. Secretary Baker spoke eloquently of our opposition to the regime and the need to isolate it at the meeting of the ASEAN members in Kuala Lumpur last June.

The United Nations is now considering what steps to take against Burma. A resolution of condemnation has been introduced. But if the Secretary Council can impose an arms embargo on Yugoslavia, can it not do the same on Burma where civil war and violence is even greater? And the perfidy of the regime even clearer.

Would it not now be the time for the President to add his most important voice to those in the administration who have spoken out against the regime. Might the administration again insist with Thailand and China, the Burmese junta's primary benefactors, that their policy is simply unacceptable. Aung San Suu Kyi is unable to speak to us now, but we must all speak for her and the Burmese people.

And so I am very proud to be able to offer a resolution for the consideration of the Senate in congratulations to Aung San Suu Kyi on her award of the Nobel Peace Prize. Might we not have to wait much longer until we may present our support and greetings to Aung San Suu Kyi herself.

CONGRATULATING DAW AUNG SAN SUU KYI FOR THE NOBEL PEACE PRIZE

Mr. PELL. Mr. President, I strongly support the resolution submitted by Senator MOYNIHAN congratulating Daw Aung San Suu Kyi of Burma on her award of the Nobel Peace Prize.

Since July 1989, Daw Aung San Suu Kyi has been under house arrest. Her family and friends cannot visit her. Letters from her husband are not even allowed her. Living in isolation has not dimmed the lamp of liberty which she fuels in her solitary resistance to the Burmese military junta.

By honoring her with the Nobel Peace Prize, the Nobel Committee has reminded the world of the tyranny the Burmese people have labored under for decades. They have reminded the world of the tremendous outpouring of popular support for democracy in 1988, when the Burmese people rebelled against their tyrants. They have reminded the world how in May 1990, the Burmese people voted for freedom. And they have reminded the world how the Burmese people's appeal for freedom was harshly suppressed by a corrupt military eager to preserve power and wealth earned through drug trafficking and through the pillage of Burmese natural resources.

Finally, they have reminded us of our responsibility not to ignore what has happened in Burma. The Congress has already done much both to express its outrage and to enforce sanctions against the Burmese Government. Now it is up to the President to provide the leadership necessary so that the rest of the world will join us in pressuring the Burmese military to surrender power.

An important measure still to be taken is to enforce an international arms embargo on Burma so that nations, such as China, end their lethal supplies to the military junta.

Aung San Suu Kyi has written that:

Saints, it has been said, are the sinners who go on trying. So free men are the oppressed who go on trying and who in the process make themselves fit to bear the responsibilities and to uphold the disciplines which will maintain a free society.

Today we are reminded not only of the oppressed in Burma straining to be free but our responsibilities as free men to come to the aid of the oppressed.

AUNG SAN SUU KYI: SYMBOL OF HOPE

Mr. CRANSTON. Mr. President, I rise today to congratulate Daw Aung San

Suu Kyi upon receiving the 1991 Nobel Peace Prize. It is with great pleasure that I join Senator MOYNIHAN in submitting a resolution commending her achievement.

This high honor has been bestowed upon a woman of tremendous courage and strength. Since her house arrest in July 1989, Aung San Suu Kyi has struggled to secure peace and justice for her countrymen in Burma. She has done this at great personal sacrifice. She refuses to live a life in exile from Burma, and she must endure separation from her family in order to stay there.

Aung San Suu Kyi's insistence on nonviolent principles was critical in transforming the Burmese uprising into a sustained and remarkably coordinate movement. Under detention, Auug San Suu Kyi led her party, the National League for Democracy [NLD], to a landslide victory in the May 1990 elections. In those elections, the National League for Democracy received some 60 percent of valid votes cast and won over 80 percent of parliamentary seats.

The Burmese junta has since refused to relinquish power to a civilian government. In the last year, the dictatorship has gone to great lengths to decimate the National League for Democracy by arresting its leaders, forcibly relocating and razing the residences of opposition strongholds, intimidating Buddhist monks, and circulating vicious antiopposition propaganda. The Burmese regime has become one of the world's most deplorable example of disregard for democratic principles and basic human rights.

But, through all of this, Aung San Suu Kyi's light has continued to shine. And, today, the world is taking note that a woman of peace has secured a voice for her people and a venue to meet the challenge to peace and freedom in her homeland.

Mr. President, I believe that this award will bring greater international attention to Aung San Suu Kyi's case and to the plight of the Burmese people. I hope that it will encourage the military dictators to release her, or at least improve the conditions of her detention and allow her to meet with her family.

The resolution Senator MOYNIHAN and I are offering calls upon the administration to take the strongest possible action against the Burmese junta. The administration has reiterated recently its intention to consult with other industrial democracies on the possibility of multilateral economic sanctions. This option must receive serious consideration. Conditions in Burma are deteriorating so rapidly that international condemnation is one of the only remaining vehicles to encourage reform.

Mr. President, I ask my colleagues to join in recognizing the remarkable achievements of Aung San Suu Kyi and in sending the Burmese people the message that they are not forgotten, by supporting this resolution.

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

The resolution (S. Res. 195) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 195

Whereas since 1962 the people of Burma have lived under brutal military repression;

Whereas in 1988 the people of Burma rebelled against their respression through massive peaceful demonstrations in support of democratic reform;

Whereas Daw Aung San Suu Kyi emerged as the leader of the Burmese people seeking peaceful and democratic change;

Whereas Daw Aung San Suu Kyi helped to establish the National League for Democracy in Burma which contested and overwhelmingly won the elections of May 1990;

Whereas Daw Aung San Suu Kyi has been kept under house arrest by the Burmese military junta since July 1989 and denied all visits from family and friends;

Whereas the Burmese military junta has ignored the election results of May 1990 and the Burmese people still suffer the harshest forms of repression by the junta, including arrest, torture and murder;

Whereas Daw Aung San Suu Kyi remains the symbol of hope and dignity for the Burmese people seeking peaceful and democratic change; and

Whereas on October 14, 1991, Daw Aung San Suu Kyi was awarded the Noble Peace Prize in recognition of her struggle and that of the Burmese people: Now, therefore, be it

Resolved, That in recognition of the heroism and inspiriting struggle of Daw Aung San Suu Kyi to bring peace and democracy to Burma, the Senate

(1) Takes great satisfaction in the award of the Nobel Peace Prize to Daw Aung San Suu Kyi, and offers its highest congratulations to her and the Burmese people;

(2) Expresses in the strongest possible terms its continued condemnation of the Burmese military junta for its repression and violations of internationally accepted human rights;

(3) Voices its continued and unwavering support for Daw Aung San Suu Kyi and the people of Burma in their struggle for peaceful and democratic change;

(4) Calls upon the President, the Secretary of State and the United States Permanent Representative to the United nations to—

(i) Publicly congratulate Daw Aung San Suu Kyi on her award of the Nobel Peace Prize;

(ii) Take the strongest possible action, including support for international sanctions, including arms and trade embargoes, against the Burmese military junta;

(iii) Encourage the restoration of democracy in Burma and condemn violations of human rights there; and

(iv) Advocate the immediate and unconditional release of Daw Aung San Suu Kyi from house arrest.

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

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

The motion to lay on the table was agreed to.

JOINT RESOLUTION INDEFINITELY POSTPONED—SENATE JOINT RESOLUTION 191

Mr. BRYAN. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of Senate Joint Resolution 191, a joint resolution providing for the most-favored-nation status of the Soviet Union, Latvia, Estonia, and Lithuania, that it be indefinitely postponed, that the motion to reconsider this action be laid upon the table.

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

Mr. BENTSEN. Mr. President, Senate Joint Resolution 191, introduced on August 2, 1991, by request, does not take into account the subsequent independence from the Soviet Union of the Baltic Republics. It is, therefore, a flawed resolution. This unanimous-consent request seeks to dispose of the flawed resolution by indefinitely postponing Senate consideration of the measure. In its place, the Senate will consider a new resolution that will be introduced today that takes into account recent events in the Soviet Union and the Baltic Republics.

ORDERS FOR TOMORROW

Mr. BRYAN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45 a.m., Wednesday, October 16; that following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond the hour of 10:15 a.m. with Senators permitted to speak therein, and that Senator NUNN be recognized to speak for up to 20 minutes.

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

RECESS UNTIL TOMORROW AT 9:45 A.M.

Mr. BRYAN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess, as under the previous order, until the hour of 9:45 a.m., Wednesday, October 16.

There being no objection, the Senate, at 6:33 p.m., recessed until Wednesday, October 16, at 9:45 a.m.

NOMINATIONS

Exective nominations received by the Senate October 15, 1991:

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

A. DAVID LESTER, OF COLORADO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR THE REMAINDER OF THE TERM EXPIRING MAY 19, 1994, VICE IRVING JAMES TODDY, RESIGNED.

NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT

DAVID J. ARMOR, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT FOR A TERM EXPIRING SEPTEMBER 30, 1992, VICE VAN B. POOLE, TERM EXPIRED.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JAMES E. LYONS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1994, VICE DANIEL H. CERTER, TERM EXPIRED.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE NATIONAL MUSEUM SERVICES BOARD FOR THE TERMS INDICATED:

FOR TERMS EXPIRING DECEMBER 6, 1993:

ROBERT G. BREUNING, OF ARIZONA VICE PAULINE CROWE NAFTZGER, TERM EXPIRED.

RUTH K. WATANABE, OF CALIFORNIA, VICE RICHARD J. HERCZOG, TERM EXPIRED.

FOR A TERM EXPIRING DECEMBER 6, 1994:

EUNICE B. WHITTLESEY, OF NEW YORK, VICE ALICE WRIGHT ALGOOD, TERM EXPIRED:

IN THE ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. WILLIAM G. T. TUTTLE, JR., xxx-xx-x... U.S. ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

LT. GEN. JIMMY D. ROSS, xxx-xx-x... U.S. ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. MARVIN D. BRAILSFORD, xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN WILLIAM G. PAGONIS, xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. LEON E. SALOMON, xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. IRA C. OWENS, xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A);

To be lieutenant general

MAJ. GEN. SAMUEL N. WAKEFIELD, xxx-xx-x... U.S. ARMY.

IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be captain

GERRY C. MCKIM
THOMAS W. RICHARDS
GERALD B. MILLS
RICHARD K. MULLER
DEAN R. SEIDEL
LEWIS A. LAPINE
GEORGE C. PLAYER III
WILLIAM T. TURNBULL
RUSSEL C. ARNOLD
KURT J. SCHNEBELE
DAVID B. MACFARLAND, JR.
CRAIG S. NELSON
THOMAS W. RUSZALA
DAVID W. YEAGER
EMERSON G. WOOD

To be commander

MICHAEL C. MEYER
THOMAS A. BERGNER
ROGER W. MERCER
JOHN A. WITHROW
EVELYN J. FIELDS
CRAIG P. BERG
FRANCESCA M. CAVA
KENNETH W. PERRIN
TODD A. BAXTER
TERRANCE D. JACKSON
DONALD A. DREVES
DAVID H. PETERSON
GEORGE E. LEIGH
GARY M. ALBERTSON
KATHRYN A. TIMMONS
RICHARD E. MARRINER II
ROGER A. MORRIS
JAMES D. SARB
DAVID J. TENNESEN
DAVID A. WALTZ
JOHN M. TOKAR
GARY A. VAN DEN BERG
DALE E. BRETSCHNEIDER
LAWRENCE F. SIMONEAUX
BRUCE W. DEARBAUGH
JAMES W. O'CLOCK
FRANK R. PHILIPPSBORN
MARCELLA J. BRADLEY
DAVID L. GARDNER
STANLEY R. IWAMOTO
TED I. LILLESTOLEN
STEPHEN C. JAMESON
DEAN L. SMEHIL
ALAN R. BUNN
HERBERT M. KIRCH
MAUREEN R. KENNY

To be lieutenant commander

PETER G. STANGL
BRUCE F. HILLARD
V. DALE ROSS
MARLENE MOZGALA
ERIC SECRETAN
ROBERT W. MAXSON
GARY D. PETRAE
JAMES C. GARDNER, JR.
RICHARD R. BEHN
DENNIS A. SEEM
DANIEL R. HERLIHY
GARY P. BULMER
DAVID J. KRUTH
PAUL E. PEGNATO
GEORGE E. WHITE
JONATHAN W. BAILEY
TIMOTHY B. WRIGHT
BRADFORD L. BENGGIO
RICHARD S. BROWN
MICHAEL W. WHITE
GRADY H. TUELL
PAUL T. STEELE
GARNER R. YATES, JR.
CRAIG N. MCLEAN
PHILIP M. KENUL
JOSE A. RIVERA
PAUL D. MOEN
PETER J. CELONE
FREDERICK W. ROSSMANN
RUSSELL E. BRAINARD
SUSAN D. MCKAY
STEVEN M. NOKUTIS
STEVEN R. BARNUM
JAMES R. MORRIS
ARTHUR E. FRANCIS
WILLIAM P. HINES
FRANK A. WOOD
ERIC G. HAWK
JOANNE F. FLANDERS
CRAIG L. BAILEY
JOHN A. MILLER
SEAN R. WHITE
JON E. RIX
TIMOTHY D. TISCH
PETER M. CONNORS

To be lieutenant

SCOTT E. KUESTER
DAVID A. COLE
THOMAS A. NIICHEL
MICHAEL B. BROWN
EMILY BEARD
ELIZABETH A. CROZER
MICHALE K. JEFFERS
MICHAEL S. ABBOTT
WADE J. BLAKE
TODD C. STILES
GLENN A. GIOSEFFI
CATHERINE A. NITCHMAN
BRIAN K. TAGGART
MICHAEL S. GALLAGHER
MARY T. FORAN
MICHAEL P. LYNCH
ROBERT W. POSTON
KRISTIE L. MILLER
PAUL L. SCHATTGEN
DANA S. WILKES
TIMOTHY C. O'MARA
CHRISTOPHER S. MOORE
STACY L. BIRK-RISHEIM
MICHAEL R. LEMON
ELIZABETH A. KEANE
DANIEL W. CHENG
ANGELA M. DOUTHERTY
JEFFREY A. FERGUSON
PHILIP S. HILL
WILLIAM B. KEARSE
TRACY A. DUNN
JOHN E. HERRING
MARK S. LARSEN
JAMES S. VERLAQUE
SCOTT K. SULLIVAN
MICHELE G. BULLOCK
DAVID K. ZIMMERMAN
RAYMOND C. SLAGLE
ANDREW L. BEAVER
EDWARD R. CASSANO
RAY T. HUDDLESTON, JR.
PHILIP R. KENNEDY
JOHN W. HUMPHREY
STEPHEN A. KOZAK

To be lieutenant (junior grade)

CHRISTOPHER T. MOBLEY
WILTIE A. CRESWELL III
JAMES R. MEIGS
MATTHEW H. PICKETT
CHRISTOPHER A. BEAVERSON
BRIAN J. LAKE
CARL R. GORENEVELD
GUY T. NOLL
DAVID O. NEANDER
WESLEY G. KITT
JOE A. INTERMILL III
DOUGLAS R. SCHLEIGER
TODD L. BERGGREN
RICHARD A. FLETCHER
TORSTEN DUFFY
JACK G. CLAYTON
CHERYL L. CALLAHAN
JULIA N. NEANDER
TIMOTHY S. HALSEY
PETER C. STAUFFER
JEFFREY K. BROWN
BARBARA E. SCHLEIGER
FRANCIS W. NOWADLY
ANDREA M. HRUSOVSKY-KLEIN
CHRISTIE M. JOHNSON
TIMOTHY C. TREMBLEY
DONALD W. HAINES
JAMES A. BUNN II
CHRISTIAN MEINIG
MATTHEW P. EAGLETON
DALE H. TYSOR
JULIE A. ROUTT
BJORN K. LARSEN
TAMARA J. STANLEY
MICHAEL S. DEVANY
KEVIN N. HARBISON
SCOTT S. STOLZ
ERIC P. NELSON
JULIE S. VANCE
THOMAS E. STRONG

To be ensign

CHRISTOPHER D. GAW
PATRICK V. GAJDYS
JOHN C. GEORGE
CARRIE L. HADDEN
KARL F. MANGELS
MATTHEW J. OBERLIES
JULIANA PIKULSKY
JOHN M. STANEC
KELLY G. TAGGART
STEVEN A. LEMKE
SAVID K. SIMMONS
CAROLYN J. MOODY
RANDALL J. TEBEEST
HEIDI L. JOHNSON
DAVID E. BIXBY
MARK S. HICKEY
THOMAS R. JACOBS
GRAMHAM A. STEWARD
MICHAEL S. WEAVER
ALAN D. HEROD
STEPHEN C. TOSINI
MICHAEL A. ROBINETTE
HEATHER A. PARKER
ERIC W. BERKOWITZ
STEPHEN F. BECKWITH
VICTOR B. ROSS III
DAVID A. SCORE
DOUGLAS D. BAIRD, JR.
DANTE B. MARAGNI
MARK J. BOLAND
MARK P. MORAN
KENNETH A. BALTZ
GLENN A. BRAINARD
GEORGE L. COLES
JOSEPH G. EVJEN
LAWRENCE E. GREENE
MATTHEW J. HARRISON
LISA P. HENN
JAMES A. ILLG
JONATHAN M. KLAY
ANITA L. LOPEZ
JAMES E. MARTIN
STEPHEN S. MEADOR
SABRINA A. MILLER
ANNE K. NIMERSHIEM
KURT F. SHUBERT
MARSHALL W. STUKES
STEPHEN J. THUMM
RICHARDO RAMOS

CONFIRMATIONS

Executive Nominations Confirmed by the Senate October 15, 1991:

DEPARTMENT OF TRANSPORTATION

ARTHUR J. ROTHKOPF, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

SUPREME COURT OF THE UNITED STATES

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

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 15, 1991, withdrawing from further Senate consideration the following nomination:

IN THE FOREIGN SERVICE

TIMOTHY C. BROWN, OF NEVADA, TO BE A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR, EFFECTIVE NOVEMBER 6, 1988. THIS NOMINATION WAS SENT TO THE SENATE ON JANUARY 4, 1991.