use of contraceptives ''require an individual to draw upon education, judgment and skill based upon knowledge and application of principles in addition to and beyond biological, physical, social, and nursing sciences.'' *Sermchief*, 660 S.W.2d at 686.

It was not unreasonable for the Board to argue that services that were generally performed by physicians and required the ''education, judgment and skill'' beyond ''nursing sciences.'' In fact, at trial, many prominent physicians testified as such. The Supreme Court, however, ruled in favor of the plaintiffs, based upon the legislative standard that was set at the time. The court relied on the nurses' professional status to know what their limits were. The Board, in bringing the case originally, simply didn't feel comfortable relying on the knowledge of an individual nurse as to what his or her limits were.

Any characterization of Senator Ashcroft's actions as Missouri Attorney General as an effort to deny health services to rural or low income patients, is at war with the facts. He was the Attorney General, and he had an obligation to defend the constitutionality of the statute. That is what he did, and it was perfectly appropriate.

Finally, I would like to respond to some criticism leveled at Senator Ashcroft for his support of pro-life legislation while Governor of Missouri. Even ardent supporters of Roe v. Wade must admit that the decision is not the model of clarity. Moreover, it did not, contrary to what many special interest groups claim, authorize abortion on demand. The decision, while establishing a constitutional right to abortion, set up a scheme that, in the words of Justice White, left the Supreme Court to serve as the country's ''ex officio medical board with powers to approve or disapprove medical and operative practices and standards throughout the United States.'' *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U.S. 52, 99 (1976). Thus, even after the Roe decision, there remained many unanswered questions about the contours of this new constitutional right. These questions included, for example, issues about parental consent for minors, minimal standards for abortion clinics, and whether public facilities or employees can be used to perform abortions. Many state legislatures—not just Missouri's—sought to answer these questions left unanswered by Roe.

The statute passed by the Missouri legislature and signed by then-Governor Ashcroft in 1986 was one of these attempts to define the parameters of the right to an abortion. Many abortions-rights extremists forget that the Supreme Court, in its abortion cases, has consistently held that states have an interest in protecting the health and safety of its citizens and in reducing the incidence of abortions. The 1986 Missouri statute sought to do just that, with 20 provisions covering various issues left unresolved by the Roe decision. The Supreme Court, in its Webster decision, agreed that many of these provisions did not infringe on a woman's constitutional right to an abortion. *See Webster* v. *Reproductive Health Services, et al.*, 492 U.S. 490, 522 (1989). Throughout this legislative and judicial process, the State of Missouri—not simply Governor John Ashcroft—followed established legal rules and procedures in their good faith effort to balance the right to an abortion with the state's interest in protecting the health and safety of its citizens. While it may have asserted its rights to appeal, the State of Missouri and then-Governor Ashcroft always respected the opinions and orders of the court and the rules governing litigation. The good faith use of the courts to decide legal issues is no basis on which to criticize Senator Ashcroft.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, is Senator LEAHY going to speak?

Mr. LEAHY. I yield to the distinguished majority leader.

UNANIMOUS CONSENT AGREEMENT—ZOELLICK NOMINATION

Mr. LOTT. We have a couple of agreements we have worked out we want to get in place.

Mr. President, I ask consent that immediately following the reconvening of the Senate on Tuesday at 2:15 p.m. the Senate proceed to executive session to consider the nomination of Robert Zoellick to be the U.S. Trade Representative, and if not reported at that time, the nomination be discharged and the Senate proceed to its immediate consideration, and that there be up to 2 hours of debate, equally divided, between the chairman and the ranking minority member of the Finance Committee.

I further ask consent that at 4:15 on Tuesday the Senate proceed to vote on the confirmation, and following the confirmation, the motion to reconsider be laid upon the table, the President be immediately notified, and the Senate resume legislative session.

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

Mr. LOTT. Mr. President, I appreciate the fact there is no objection. I believe this nominee will be confirmed overwhelmingly, probably even unanimously. There is a feeling by Senators on both sides of the aisle that this trade issue is very important. This is an important position. A number of Senators did want to be able to have an opportunity to speak about our trade relations and our trade agreements around the world. That is why it was not completed this afternoon. I believe it will be done in regular order on Tuesday.

MEASURE READ THE FIRST TIME—S. 235

Mr. LOTT. I understand S. 235 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 235) to provide for enhanced safety, public awareness and environmental protection in pipeline transportation, and for other purposes.

Mr. LOTT. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

Mr. LOTT. Mr. President, I should note that the purpose in taking this action now is to get this legislation ready for consideration next week. Senator DASCHLE and I are trying to get in a position to have the Zoellick nomination on Tuesday, the U.N. dues issue on Wednesday, and the pipeline safety legislation next week. These are all issues we are all very familiar with that have broad support. I believe we can do the three of them next week without any problem.

ORDERS FOR MONDAY, FEBRUARY 5, 2001, AND TUESDAY, FEBRUARY 6, 2001

Mr. LOTT. I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 10 a.m. on Monday, February 5, for a pro forma session only. No business will be transacted during Monday's session. The Senate would immediately adjourn until 9:30 a.m. on Tuesday, February 6. I further ask consent that on Tuesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to a period of morning business until 12:30, to be divided in the following fashion: Senator DASCHLE or his designee controlling the time between 9:30 and 11 a.m.; Senator HUTCHISON of Texas or her designee controlling the time between 11 a.m. and 12:30.

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

Mr. REID. If I could ask for a modification, that Senator DORGAN control the time from 10:30 to 11 o'clock a.m. on that date.

Mr. LOTT. I have no objection to that addition to the request.

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

Mr. LOTT. I further ask consent that the Senate stand in recess between the hours of 12:30 and 2:15 in order for the weekly caucuses to meet.

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

PROGRAM

Mr. LOTT. On Tuesday, following the weekly recess, at 2:15 we will proceed to the nomination of Robert Zoellick

to be USTR for up to 2 hours. Therefore, a rollcall vote will occur at 4:15 on Tuesday on that nomination, by a previous consent. On Wednesday, the Senate is expected to consider the U.N. dues bill. Therefore a vote or votes could occur, then, on Wednesday of next week relative to that legislation, and on Thursday with relation to the pipeline safety bill.

I yield the floor.

Mr. LEAHY. Mr. President, while my friend from Mississippi is still here, I ask unanimous consent, it is only a matter of a few minutes, that I still have the full half hour that had been reserved under the previous order.

Mr. LOTT. Are you making a request or observation?

Mr. LEAHY. I make it as a request because the time that the distinguished leader took went into that time.

Mr. LOTT. I certainly would not object to that. I do wish to speak briefly myself. I believe I would be in control of the time after that.

Mr. LEAHY. In fact, I will add to that: In doing so, that it not impinge on the time reserved for the distinguished majority leader.

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

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, as we get to the end of this debate, I think it is wise if we look at some of the facts of the debate and not just the rhetoric.

We debated this matter virtually nonstop from 10:30 yesterday morning until 8:10 yesterday evening. We did it without intervening business. I do not think we had as much as 5 minutes expended in quorum calls. For our side, this was certainly not a dilatory debate but a substantive one. It was not the politics of personal destruction, but the Senate exercising its constitutional responsibility to examine one of the most important nominations that this President or any President could send to the Senate.

Let's go over the facts. The Senate received the President's nomination on Monday afternoon of this week. The Judiciary Committee debated this nomination on Tuesday afternoon the following day, and voted on it that evening. We began the Senate debate yesterday morning, less than 48 hours after receiving the nomination. We are concluding it in less than 14 and one half hours of Senate debate. We are voting up or down on this nomination this afternoon.

I mention this because I have heard those who point to the nomination of the last Attorney General, Janet Reno, as some sort of model of speedy confirmation. She was nominated after an earlier nomination had hearings and was withdrawn. Her nomination was not voted upon for a month after she was nominated. By comparison, we are voting on John Ashcroft when his nomination has been before us for only less than three days. That was not a controversial nomination. Republicans, as well as Democrats, came to the floor to praise her record, but she was still not sworn in until mid-March.

A better comparison would be to find the last controversial nomination; that was that of Attorney General Meese. He was first nominated in January 1984 by President Reagan. He was finally considered by the Republican-controlled Senate in February 1985, 13 months after being nominated. Five weeks ensued between his nomination and his initial hearing.

The nomination underwent 7 days of hearings, involved nearly 50 witnesses, under a Republican-controlled Senate, when he was Republican nominee by a popular Republican President. He was reported by the Judiciary Committee, a Republican-controlled Judiciary Committee, by a 12–6 vote, not the lesser margin of 10–8 by which the Ashcroft nomination was reported.

The Senate, with a Republican majority leader, allowed 2 weeks between the committee vote and Senate consideration—2 weeks, not the 17 hours we had on the Ashcroft nomination. The Senate debated the Meese nomination over 4 days, on February 19, 20, 21, and 23—not the day and a half devoted to the Ashcroft nomination. Then, the Republican-controlled Senate voted 63–31 to confirm Attorney General Meese.

I believe those 31 negative votes were the most ever against an Attorney General. Even as the very popular President Reagan was preparing to begin his second term, the nomination of his Attorney General resulted in 7 days of Senate hearings, 4 days of Senate debate, and 31 votes in opposition. I mention this because there was some suggestion that maybe some on this side held this up. This nomination was handled a lot more rapidly done than at the time of Attorney General Meese.

The Senate is soon going to vote on the nomination of John Ashcroft to be Attorney General. I think it is safe to say that all of us in this body would like to be able to vote in favor of the next Attorney General. Those of us who are going to vote no on this nomination take no pleasure in doing so. Frankly, I have heard many say—and I feel this myself—we wish the President had sent a different nomination for this critical job. We wish, if he wished to have our colleague, Senator Ashcroft in the Cabinet, that he had nominated him for a different position. We wish the President had adhered to the standard he set forth in his own inaugural address and that he had sent us a nominee who would unite the country and have the utmost credibility with the disaffected, dispossessed, and disenfranchised.

We knew the nomination of Senator Ashcroft had become a ''done deal'' weeks ago. The Republican leadership reported that all 50 Republican Senators would be voting in favor of this nomination, and, of course, with the Vice President they would be able to win.

This decision was made before any hearing, before the nominee answered any question, written or oral, before any background check or review of his record was ever begun, let alone completed. That is why some members of the Judiciary Committee on the other side went so far as to argue that the committee need not hear testimony from the public at all, and need not review the nominees's required financial disclosures, papers required of every nominee.

Most Democratic Senators, I am happy to say, declined to prejudge the matter. As chairman during the 17 days of the Judiciary Committee hearing, I expedited a balanced hearing to review the nominee's record and to hear people from Missouri and others, pro and con, on this important nomination. We had virtually an equal number for Senator Ashcroft as against him—I think actually one more for. But I believe that all Senators can be proud that our hearings focused on issues, not on the nominee's personal life. We can also be proud of the tone set during this debate on the Senate floor.

But there is one big exception. I take strong exception—in fact, the strongest terms I can think of in my 26 years in the Senate—to the characterization we have heard about the issue of religion and this nomination. The Senate was told that opponents of this nomination have implied that Christians have no place in public life.

If that charge was not on its face so absolutely preposterous in this body, it would have invited several hours of discussion to set the record straight. It is such an untrue and inflammatory assertion.

Needless to say, if that was the debate, it would be fair to speculate that many, probably most of President Bush's nominees are Christians and confirmed by this body. All of his nominees are confirmed. I know of none planned, or who have been announced by the distinguished leader as ready for votes, who are not going to be confirmed. If their religion has been mentioned at all, it has been mentioned to their credit.

Is it really necessary to point out that men and women of Christian faiths are plentiful in both parties in these very Halls of Congress? More to the point, there are good people, who are Christians, on both sides of the Ashcroft nomination, just as there are good people, who are not Christians, on both sides of the Ashcroft nomination. In fact, the reason religion has come up during these confirmation proceedings is not because of John Ashcroft's religious beliefs, but because of concern about the level of tolerance he may show towards those with different religious beliefs. That is why his visit to and acceptance of an honorary degree from, and comments made during the hearings about Bob Jones University, have been a legitimate concern to many.

The relevance of Senator Ashcroft's association with Bob Jones University

is not about his own religious beliefs. It is about what it says about Senator Ashcroft's sensitivity and tolerance towards those whom that institution regards in such negative ways, and treats so differently. The policies of that institution have been to bar African Americans, to bar interracial dating, and to derogate Mormons and Catholics as belonging to cults.

That John Ashcroft does not seem to fully understand the concern that this causes to many Americans is itself troubling to so many. We have heard from some the term they have seemed to coin: ''religious profiling.'' I will say it once again as clearly as I can. No Senator on either side of the aisle during these proceedings has sought to apply any religious test to John Ashcroft. No Senator has sought to tar the nominee as a racist. Senator Ashcroft's religious beliefs have not been a source of inquiry or concern for any member of the Judiciary Committee.

Notwithstanding, ironically enough, what Bob Jones University has said about Catholics and Mormons—with the two leaders of this committee being one a Catholic and the other a Mormon—both Senator HATCH and I have said we have never once heard Senator Ashcroft take the position that Bob Jones University has towards us or anybody of our religions.

This confirmation debate has not been about religious profiling. If anything, this is a nomination struggle about issue profiling, and those issues include the nominee's record on civil rights and women's rights, the rights of gay Americans, and voter registration.

Those supporting this nomination argue that he should be confirmed because his religious devotion represents a special, unimpeachable level of integrity, and that his religion makes him more likely to abide by his oath of office. My view is that religion is neither a qualification nor disqualification for public office. I hold deep religious beliefs. But as I told someone as I left church this Sunday, this past Sunday: I would not expect anybody to vote either for or against me because of my religious beliefs.

I would expect them to vote for or against me because of my political beliefs.

Indeed, article VI of the Constitution prohibits any religious test as a qualification for public office. I hope Senator Ashcroft's supporters are not urging any form of such unconstitutional test.

The issue is his public record, not his religious faith. I and several others have said how much we admire his commitment to his family and his religion. I consider those two of the most admirable qualities in our former colleague. The issue, though, is how he has fulfilled his public duties.

Senator BYRD posed the question yesterday whether any man's past can withstand scrutiny. Confirmation hearings should not be held to dissect a nominee's personal life—and this one did not—but they are to examine his past record and actions, to hear from the nominee about how he views his prior positions and actions within the perspective and wisdom that time should bring.

What I observed of this nominee at his hearings can be summed up in two words: No regrets.

He had no regrets about the aggressive manner in which he litigated in opposition to a voluntary desegregation plan in St. Louis, or about the missed opportunity to resolve that divisive matter, about his use or his involvement for political gain, or about the misleading testimony he initially gave the committee about whether the State of Missouri was a party to the litigation and had been found liable.

He had no regrets about vetoing two bills designed to ensure equal voting rights for African American voters in St. Louis.

He had no regrets about appearing at Bob Jones University, and he even testified that he might return there after being confirmed as Attorney General of the United States.

He certainly passed up the opportunity, as has been suggested, now that he knows so much about Bob Jones University, to take the honorary degree, put it in an envelope, and send it back. He had no regrets about granting an interview to the Southern Partisan and praising this neo-Confederate magazine and appearing to embrace its point of view.

One of the things that bothered me greatly is that he had no regrets about his treatment of Judge Ronnie White, Ambassador James Hormel, Bill Lann Lee, Judge Margaret Morrow, or any of the other Presidential nominees he opposed.

Each of us has a duty to determine how we exercise our constitutional duty of advise and consent. As I said at the outset of this debate, strangely enough—or perhaps not so strangely—the Constitution is silent on the standard we should use in deciding how to fulfill our advise and consent duty.

I have thought about this over the years, and I have come to the conclusion that it is testament to the wisdom of the framers because, in the end, those who elect us have the final say in whether they approve of how we conducted ourselves and, if they approve, of how we exercised our constitutional responsibilities.

Some have argued that the issues that have arisen during this confirmation process have been generated out of thin air by advocacy groups or by Senators who oppose this nomination. In fact, these are the same issues upon which the voters of Missouri based their verdict on election day last November, an election Senator Ashcroft lost.

John Ashcroft's actions toward Judge Ronnie White and his association with Southern Partisan magazine and Bob Jones University were hotly debated in Missouri. They were issues in his unsuccessful reelection campaign.

The Kansas City Star noted in November 1999:

> A lot of Missourians are still struggling to understand why Sen. John Ashcroft took out Ronnie White.

Rallies for Judge White were held in downtown St. Louis. Local groups circulated petitions calling for Senator Ashcroft to ''publicly retract'' his comments in Southern Partisan. At least one Missouri municipality passed a resolution asking Senator Ashcroft to ''cease the promotion of Jefferson Davis'' and other Confederate leaders in Southern Partisan, and they criticized his actions with respect to Judge White.

Another Missouri city council passed a resolution asking Senator Ashcroft to apologize to Missouri residents for his comments in Southern Partisan.

Yesterday, an old friend, a Republican, contacted me to share a quote from Reinhold Niebuhr:

> Man's capacity for justice makes democracy possible; but man's inclination to injustice makes democracy necessary.

In this regard, I note that we heard often about John Ashcroft's past election victories in Missouri. What has gone unmentioned is the fact that the voters of Missouri registered a negative judgment on the politics, policies, and practices of John Ashcroft just last November. Not surprisingly, they are the same issues that have arisen during his confirmation debate. We heard during our hearings how African American voters of Missouri had voted overwhelmingly against him.

John Ashcroft's stubborn defense of his past record and the fact he has no regrets over incidents that concern many of his Missouri constituents and that now concern many Americans does not instill confidence. On the contrary, to many it is a troubling signal. He lacks the sensitivities and balance we need in the Attorney General. We need an Attorney General who has the trust and confidence of the American people and who is dedicated to protecting the rights of all of us.

Remember, the Attorney General is not the President's lawyer. He has a White House counsel. The White House counsel is not required to come to the Senate for confirmation. The Attorney General is there for all of us—black, white, rich, poor, Democrat, Republican, no matter who we are.

The American people are entitled to an Attorney General who is more than just a friend to many of us in the Senate, as John Ashcroft is a friend, and who promises more than just the bare minimum, that he will enforce the law. All Americans, whether they are part of the 100 Members of a Senate club, no matter what they may be, all Americans, the 280 million other Americans who do not serve here, are entitled to someone who will uphold the Constitution as interpreted by the Supreme Court, who will respect the Congress

and the courts, who will abide by decisions with which he disagrees, and enforce the law for all people regardless of politics. They are entitled to someone whose past record demonstrates that he or she knows how to exercise good judgment in wielding the enormous discretionary power of the Attorney General.

I said before that we cannot judge John Ashcroft's heart, nor should we be able to, but we can examine his record. And running through that record are disturbing recurrent themes: Disrespect for Supreme Court precedents with which he disagrees; grossly intemperate criticism of judges with whom he disagrees—the ''ruffians in robes'' comment—insensitivity and bad judgment on racial issues; and the use of distortions, secret holds, and ambushes to harm the careers of those whom he opposes or for political gain.

I engaged in a colloquy yesterday with the senior Senator from Virginia during this confirmation process. Senator WARNER is a dear and valued friend. We have been friends for decades. He observed that he thought the hearings and consideration by the Senate will result in John Ashcroft being a stronger, more deeply committed public servant.

It is my fervent hope that John Ashcroft has come to understand the reasons that many of us are troubled by his record and troubled by the manner in which he responded to our concerns at the nomination hearing.

I hope Senator Ashcroft better appreciates the concerns of the significant number of Americans who oppose this nomination. Public opinion polls show there are as many people opposed to the nomination as support it. For those who doubt the promise of American justice—and, unfortunately, there are those in this country who do, for whatever reason—this nomination has not inspired confidence in the man nominated to head the U.S. Department of Justice.

If John Ashcroft is to be confirmed, then he is going to have a lot of work to do to prove that the President's choice was a wise one, and that he will be the people's lawyer and defender of their rights—all the people.

The country is sharply divided about this nomination, but so is the Senate. I wish the President had sent the Senate a nominee who would unite us and not divide us, but that did not happen.

I hope the President knows—after this debate, and after this divisive election—the task of bringing the Nation together still lies ahead of us. I hope all of us will be able to help in that uniting.

I think nothing I will ever do in my life will mean as much to me as serving in the Senate. I have served with 280 or so Senators, who have all been people I have admired and respected. I hope that after this nomination, and after this battle—however the vote comes out; I expect I know how it will come out—then the Senate will work together, on both sides of the aisle, with the new President, and with all members of his Cabinet, and with the new Attorney General, to start healing these wounds, to not just talk about bringing us together, but to actually do it.

There are deep, deep concerns in the country about this nomination. I would suggest that every one of us—Republican and Democrat—have a long road ahead of us to bring those sides together, but on that long road we also have the responsibility to take that trip.

I reserve the remainder of my time.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to have printed in the RECORD some materials that I believe will be relevant to the consideration of this nomination: a letter from the National Sheriffs' Association; a letter from the Missouri Sheriffs' Association; a written statement of Sheriff Kenny Jones before the Committee on the Judiciary; and testimony of U.S. Representative KENNY HULSHOF before the U.S. Senate Committee on the Judiciary.

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

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, October 4, 1999.

Hon. JOHN ASHCROFT,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ASHCROFT: I am writing to ask you to join the National Sheriffs' Association (NSA) in opposing the nomination of Mr. Ronnie White to the Federal Judiciary. NSA strongly urges the United States Senate to defeat this appointment.

As you know, Judge White is a controversial judge in Missouri while serving in the Missouri Supreme Court. He issued many opinions that are offensive to law enforcement; one on drug interdiction and one involving the death penalty. Judge White feels that drug interdiction is not a proper function of law enforcement. He wrongly reasons that drug abuse is a private matter that causes no public harm, and drug abusers should not be inconvenienced by interdiction efforts. We strongly disagree. Drug interdiction is a cornerstone in the fight against crime, and this reckless opinion undermines the rule of law.

Additionally, Judge White wrote an outrageous dissenting opinion in a death penalty case. In 1991 Pam Jones, the wife of Sheriff Kenny Jones of Moniteau, Missouri, was gunned down while hosting a church service at home. The assailant, who was targeting the Sheriff, was tried and convicted of murder in the first degree. He was subsequently sentenced to death for Mrs. Jones' murder. During the appeals process, the case came before the Missouri Supreme Court where six of the seven judges affirmed the conviction and the sentence. Judge White was the court's lone dissenter saying the assailant had a tough childhood and was therefore not accountable for the heinous crime he committed. In our view, this opinion alone disqualifies Judge White from service in the Federal courts. He is irresponsible in his thinking, and his views against law enforcement are dangerous.

We urge you in the strongest possible terms to actively oppose the nomination of Judge White. He is clearly an opponent of law enforcement and does not deserve an appointment to the Federal Judiciary. His views and opinions are highly insulting to law enforcement, and we look forward to working with you to defeat this nomination.

Respectfully,

PATRICK J. SULLIVAN, JR.,
Sheriff.

MISSOURI SHERIFFS' ASSOCIATION,
Jefferson City, MO, September 27, 1999.

Senator ORRIN HATCH,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Attached please find a copy of the dissenting opinion rendered by Missouri Supreme Court Judge Ronnie White in the case State of Missouri, Respondent, v. James R. Johnson, Appellant.

Also, please find attached a copy of a petition signed by 92 law enforcement officers in Missouri, including 77 Missouri sheriffs.

In December 1991, James Johnson murdered Pam Jones, wife of Moniteau County Sheriff Kenny Jones. He shot Pam by ambush, firing through the window of her home during a church function she was hosting. Johnson also killed Sheriff Charles Smith of Cooper County, Deputy Les Roark of Moniteau County and Deputy Sandra Wilson of Miller County. He was convicted and sentenced to death. When the case was appealed and reached the Missouri Supreme Court, Judge White voted to overturn the death sentence of this man who murdered Mrs. Jones and three good law officers.

As per attached, the Missouri sheriffs strongly encourage you to consider this dissenting opinion in the nomination of Judge Ronnie White to be a U.S. District Court judge.

Sincerely,

JAMES L. VERMEERSCH,
Executive Director.

WRITTEN STATEMENT OF SHERIFF KENNY JONES BEFORE THE COMMITTEE ON THE JUDICIARY, CONFIRMATION HEARINGS OF JOHN ASHCROFT, U.S. ATTORNEY GENERAL DESIGNATE, JANUARY 2001

Senator Leahy, Senator Hatch, Members of the Judiciary Committee, I am honored and a little overwhelmed to be here today to testify on the nomination of John Ashcroft to be Attorney General of the United States.

Mr. Chairman, my name is Kenny Jones and I am the elected Sheriff of Moniteau County, Missouri, an office I have been privileged to hold for the last sixteen years. For those who may not know, Moniteau County is a very small unusually quiet county in mid-Missouri with a population of approximately 13,000. We are a strong tight knit community in the heartland of America. We believe in traditional values and we have a deep faith. We are small town America at its best.

As you know, much has been said about John Ashcroft and his fitness for this office. I for one support his nomination and urge this Committee to support him as well. Last year, Senator Ashcroft was unjustly labeled for his opposition to the nomination of Judge Ronnie White to federal district court. This one event has wrongly called into question his honor and integrity. Be assured that Senator Ashcroft had no other reason that I know about, to oppose Judge White except that I asked him too. I opposed Judge White's nomination to the federal bench and I asked Senator Ashcroft to join me because of Judge White's opinion on a death penalty case.

In December 1991, James Johnson changed the lives of many families in our small rural community. He held an elderly woman hostage, killed four people, and seriously

wounded another. Johnson murdered in cold blood, the sheriff from a neighboring county, two deputy sheriffs, and my wife, Pam Jones. For this, he was tried by a jury, convicted of four counts of first degree murder, and sentenced to death.

To understand just how horrid this event is and to comprehend the devastating impact this crime has on my county, you need to understand the facts of that December night. It is easy to talk about dissenting opinions and legal maneuvering in this case and take the human tragedy out of it. But, that is a mistake. This case is entirely about human tragedy and justice. Not a day goes by that I don't think about what James Johnson did to my family and my community. Can you even imagine how it forever changed life in a small Missouri community?

On the evening of December 9th, Deputy Leslie Roark, was dispatched to the residence of James Johnson on a domestic disturbance call. After arriving on the scene and speaking with Johnson, his wife and his stepdaughter, Deputy Roark apparently ascertained they were all fine. He could not have been more wrong. As Deputy Roark turned to leave, Johnson pulled a gun and shot him in the back. My deputy fell face down, rolled over, and struggled to defend himself. Johnson then shot Les in the forehead at point-blank range. After shooting Leslie Roark, Johnson armed himself with more weapons and drove to my house in rural Moniteau County looking for me. I was not home. I had taken my two sons to their 4-H Club meeting. My wife, Pam, and our two daughter were home, however. They were hosting a Christmas party for a group of local churchwomen and their children. Upon arriving at my house, Johnson opened fire on completely innocent people. He fired several shots through a bay window, hitting my wife who was sitting with my daughter on a bench in front of the window. After the assault on my home, Johnson went to the home of Deputy Russell Borts and shot him, also through a window, as he was talking on the telephone. Russ lives today with several injuries inflicted by Johnson.

During the attack on my family and Deputy Borts, a call for help went out and many officers from surrounding counties responded to my office. Sheriff Charles Smith, from Cooper County personally responded to the call for help. What he did not know was that Johnson had moved down the block from the Borts residence and was laying-in-wait at my office. As Sheriff Smith was getting in his car, Johnson gunned him down in front of the Moniteau County Sheriff's Office. Just moments later, Johnson shot and killed Officer Sandra Wilson who had driven in from Miller County responding to the call for help. It is important to note that this coward never once confronted his victims fact to face. Every single person he shot and killed was shot in the back.

Before Johnson was apprehended, he held an elderly woman hostage until for some unknown reason, he released her. She escaped and told the authorities where Johnson was hiding. A team of negotiators finally convinced Johnson to surrender and he was taken into custody.

After dropping off my boys at 4-H, I found out that Les Roark had been shot. I went to be with him while we waited for the Life Flight helicopter. While there, I received the call that would change my life forever. I was told of an emergency at my own house. I raced home. There I saw an ambulance in the driveway and shocked people standing around. My secretary, Helen Gross, told me that Pam had been shot and our daughters had been taken to a neighbor's home. Pam was flown by helicopter to the University of Missouri Hospital. I gathered my four children and went to Pam's side. She died just a short time later.

James Johnson was tried, convicted and sentenced to death by a jury in February 1993. Every one of his appeals, including his appeal before the Missouri Supreme Court, was denied. In the Missouri Supreme Court, all but one of the judges affirmed the decision of the lower court. The only dissent was from Judge Ronnie White. In his opinion, Judge White urged that Johnson be given a second chance at freedom. I cannot understand his reasoning. I know that the four people Johnson killed were not given a second chance.

When I learned that Judge White was picked by President Clinton to sit on the federal bench, I was outraged. Because of Judge White's dissenting opinion in the Johnson case, I felt he was unsuitable to be appointed for life to such an important and powerful position. During the Missouri Sheriffs' Association Annual Conference in 1999, I started a petition drive among the sheriffs to oppose the nomination. The petition simply requested that consideration be given to Judge White's dissenting opinion in the Johnson case as a factor in his appointment to the federal bench. Seventy-seven Missouri sheriffs, both Democrats and Republicans, signed the petition and it was available to anyone who asked. I have the petition with me and respectfully ask that it be made a part of the record of this hearing. A copy was forwarded to both Senator Bond and Senator Ashcroft. I also asked that the National Sheriffs' Association support us in opposing Judge White's nomination. They willingly did so and I am grateful that they joined us and wrote a strong letter opposing Judge White's nomination.

While some would have you believe otherwise, this is the only reason sheriffs opposed the nomination of Judge White. We contacted Senator Ashcroft and urged him to oppose this nomination as well. He agreed with our position, but unfortunately, his view on Judge White's nomination was misrepresented in the press and misrepresented to other members of the Senate. People alleged all sorts of reasons for the eventual defeat of Judge White's nomination. I can only speak for myself and can only testify to what I know to be true. I opposed Judge White's elevation to the federal bench solely because of his opinion in the Johnson case. Johnson murdered my wife in cold blood. He killed three close friends and colleagues and seriously wounded a fourth. Offering him a second chance as Judge White would do, is something that I will never understand. I asked Senator Ashcroft to oppose the nomination based on what I have shared with you here during this hearing. By opposing the nomination of Judge White, Senator Ashcroft did nothing more than properly exercise Constitutional authority based on the information he had available. I hope this information will correct the record and prove that John Ashcroft did not act with an unseemly intent.

To deny John Ashcroft and reject his nomination to be Attorney General based solely on his opposition to Judge White would be wrong and a terrible loss for the country. I hope my testimony today provides the information you seek to make a truly informed decision on John Ashcroft. In my view, he will make a fine Attorney General and I hope that he will be confirmed. Thank you Mr. Chairman and I stand ready to answer your questions.

TESTIMONY OF U.S. REPRESENTATIVE KENNY HULSHOF BEFORE THE U.S. SENATE COMMITTEE ON JUDICIARY, JANUARY 18, 2001

I would like to thank Chairman LEAHY and Ranking Member HATCH for the opportunity to testify before this committee.

I fully support President-elect Bush's decision to nominate Senator John Ashcroft to the position of Attorney General. His past service to the people of my home state of Missouri as Attorney General, Governor and Senator give him the experience and knowledge to be an effective agent of justice for all Americans.

I am not here today as a U.S. Representative from Missouri's Ninth District. My appearance here is to share with you my unique knowledge of the case of State of Missouri vs. James Johnson.

From February of 1989 until January of 1996, I served as a Special Prosecutor for the Missouri Attorney General's Office. In this capacity, my duties included the prosecution of politically sensitive or difficult murder cases across the State of Missouri. I handled cases in 53 Missouri counties and have tried and convicted violent criminals in more than 60 felony jury trials. In January, 1992, I was assigned as co-counsel in the prosecution of the Johnson case.

As you know, the Johnson case has taken on national prominence, but not because it involves a convicted cop killer. It has become a focal point in this process due to the strong disagreement that John Ashcroft and some law enforcement groups had with Missouri Supreme Court Judge Ronnie White's sole dissent on the appeal of this case.

You are measuring John Ashcroft's ability to be the nation's Attorney General by examining his record. In the same manner, John Ashcroft measured Ronnie White's ability to be a federal jurist by scrutinizing his record and published opinions—not his race as some have charged. John Ashcroft has testified that he had serious reservations about Judge White's opinions regarding law enforcement.

Let me share with you the facts of the Johnson case:

In December of 1991, Moniteau County Deputy Sheriff Les Roark responded to a domestic disturbance call at the home of James Johnson in rural Missouri. After assuring himself the domestic quarrel had ended, Deputy Roark turned to return to his waiting patrol car. James Johnson whipped a .38 caliber pistol from his waistband of his pants and fired twice at the retreating officer. Johnson, realizing that Roark was clinking valiantly to life, walked over to the fallen officer and shot him again execution-style.

He next negotiated the dozen or so miles to the home of Moniteau County Sheriff Kenny Jones. Peering through the window, he saw Pam Jones, the sheriff's wife. She was leading her church women's group in their monthly prayer meeting in her family's living room, her children at her knee. Using a .22 caliber rifle, Johnson fired multiple times through the window, hitting her five times. She was gunned down in cold blood in front of her family.

I wish I could tell you that the carnage soon ended. Instead, James Johnson proceeded to the home of Deputy Sheriff Russell Borts. Displaying the methodical demeanor of a calculating killer, Johnson shot Deputy Borts four times through a window as Borts was being summoned for duty via telephone. Miraculously, Borts survived. Cooper County Sheriff Charles Smith and Miller County Deputy Sandra Wilson were not so fortunate. They died in a hail of bullets when Johnson ambushed them outside the sheriff's office.

As a result of Johnson's rampage, three dedicated law enforcement officials were dead, one was severely injured and Pam Jones, a loving wife and mother, had been slaughtered.

Mr. Chairman, I wish to clarify a few of the points raised during yesterday's hearing regarding the quality of James Johnson's representation at trial. Mr. Johnson hired counsel of his own choosing. He chose a team of

three experienced defense attorneys who possessed substantial experience in litigation and criminal law. The three litigants had tried a previous capital case together.

The record conclusively establishes that counsel launched a wide-ranging investigation in an effort to locate veterans who had served with the accused in Vietnam. Counsel hired and presented three nationally-renowned mental health experts on the relevant issue of posttraumatic stress disorder.

The evidence of guilt, however, was unassailable. Based on the strength of a detailed confession by the accused to law enforcement officers, incriminating statements to lay witnesses, eyewitness accounts to one of the murders and circumstantial evidence, including firearms identification, James Johnson was convicted by a jury of four counts of murder in the first degree. The jury later unanimously recommended a sentence of death on each of the four counts.

After a lengthy post-conviction hearing on the adequacy of counsel, Circuit Judge James A. Franklin, Jr. found that Johnson's attorneys devoted a significant period of time and expense to his case, including a substantial attempt to develop and present a mental defense. The court found as a matter of law that James Johnson received skilled representation throughout his trial. The case was then automatically appealed to the Missouri Supreme Court, where the convictions and sentences were upheld 4–1. Judge White's lone dissent focused on inadequate assistance of counsel at trial. As I have stated and the record indicates, this is clearly not the case.

I have been deeply troubled during these confirmation proceedings by statements insinuating, overtly or otherwise, that John Ashcroft is a racist. More to the point, there have been allegations made that John Ashcroft's rejection of Judge Ronnie White's nomination to the federal district court was racially motivated. As a Missourian, I am offended by these baseless claims.

It is my belief that members of this distinguished panel and members of the entire Senate take the constitutional role of ''advice and consent'' very seriously. It is an integral part of our system of checks and balances.

It is my humble opinion that no individual took that responsibility more seriously than your former colleague, John Ashcroft. As evidence of that fact, I cite to you the October 5, 1999, Congressional Record:

''[Mr. Ashcroft] Confirming judges is serious business. People we put into these Federal judgeships are there for life, removed only with great difficulty, as evidenced by the fact that removals have been extremely rare. There is enormous power on the Federal bench. Most of us have seen things happen through judges that could never have gotten through the House and Senate. Alexander Hamilton, in Federalist Paper No. 78, put it this way:

'' 'If [judges] should be disposed to exercise will instead of judgement, the consequence would equally be the substitution of their pleasure to that of the legislative body.'

''Alexander Hamilton, at the beginning of this Nation, knew just how important it was for us to look carefully at those who would be nominated for and confirmed to serve as judges.''

Former Senator Ashcroft then elaborated on the dissenting opinions by Judge White in a series of criminal cases, including State of Missouri v. James Johnson. He acknowledged an outpouring of criticism levied against Judge White's nomination by respectable law enforcement groups. His ultimate rejection of Judge White's nomination was based on his judgement and legal reasoning. As you know, a majority of the Senate voted to reject the nominee.

Reasonable minds can differ on John Ashcroft's conclusion regarding Judge White's fitness as a federal jurist. These differences should be vigorously debated and considered. That is the hallmark of our republic. But branding a good man who has devoted his professional life to one of public service with the ugly slur of ''racist without justification or cause is intolerable.

I know John Ashcroft. He is an honorable man of high integrity and morals. His commitment to his family, his state and his country are beyond compare. His experience and public service make him very qualified to be the next Attorney General of the United States. You have his assurance that he will faithfully execute the law in a way consistent with the will of Congress, in accordance with the rulings of our judicial system and in a manner that protects the liberties of all Americans.

Again, I would like to thank Chairman Leahy, Ranking Member Hatch and this distinguished panel for allowing me to testify.

Mr. BOND. Mr. President, 28 years ago, I had the responsibility to appoint a State auditor for Missouri. Based upon what I saw to be the promise in John Ashcroft—his character, intelligence, and commitment to public service—I selected him.

For the past 28 years, I have had the honor and privilege to work with him as he handled his duties in the best and highest tradition of Missouri and of this country. Many of my colleagues have also seen him during the last 6 years, when he served with distinction in the Senate.

I know this man. Most of you in this body know this man. He is a good man, whose service reflects well on his friends, his family, our State of Missouri, and on this great body.

Everything about John Ashcroft's record of public service and his personal integrity and character tells us that he will be faithful to the law. Everything about John's career also tells us that he understands one thing above all else: The promise contained in this Nation of laws can only be realized when all the laws are properly enforced.

Two weeks ago, I went before the Judiciary Committee to ask that they judge John Ashcroft's nomination to be Attorney General on the content of his character, and reject the slime campaign then underway against him.

Today I must say I stand here profoundly disappointed so many failed to push away those whose only goal is to tear down and destroy.

However, let me add my sincere appreciation of the fact that some of our colleagues on the other side of the aisle have chosen to support this nomination, despite the strong political winds blowing against them, including clear-cut threats of retaliation at the polls for any vote in favor of John Ashcroft.

Senator RUSS FEINGOLD was courageous in casting the lone Democratic vote in favor of the nominee in committee. My friends, Senator BYRD, Senator DODD, and others, have announced on the floor they intend to support the nominee for reasons they gave. I commend them and thank them for that.

I note that others of my colleagues appear to have given the nomination full consideration and concluded, for their own substantive reasons, not to support this nomination. While I disagree with their final decision, I certainly cannot condemn their actions. But I am deeply disturbed and disappointed in some of the things done and said in the Judiciary Committee and some of the remarks made on the Senate floor.

Over the past month, we have seen self-described spokesmen of various activist groups—groups that preach tolerance, diversity and religious freedom—systematically display their intolerance, narrowness, and dogmatic views, as they try to smear the record of the man who has been nominated to be the Attorney General of the United States.

In fact, I think the words on this chart tell us all we need to know—this is from the special interest groups of what they are doing—''by any means necessary.'' ''We're going to spend whatever it takes.'' These are the words of the extreme liberal groups that are out to sabotage John Ashcroft and, incidentally, his nomination. The purpose—search and destroy.

Like millions of Americans, I watched the Senate confirmation hearing to see both how my friend would do in answering questions defending his record but also to see how potential opponents would handle their responsibilities.

I, too, hoped for full and fair hearings.

Two weeks ago, the American people did not see a confirmation hearing. They did not see the Senate Judiciary Committee acquit itself in the best and highest traditions of this fine body. They did not see full and fair hearings. What they saw—pure and simple—was an exercise in political theater of the worst kind.

I cannot begin to express my profound disappointment in how some of my colleagues handled their few days in the majority—mishandled their days to rise above the rancor. In the Ashcroft hearing, there was an opportunity to set an example for us to follow for the rest of this session. Instead of rising to the occasion, too many sank to the level of the interest groups, where only the shrillest survive.

What we heard was a campaign designed to create a caricature, and to fan the grotesque charges of racism, bigotry, and so-called political opportunism—a campaign so out of control that 2 days of questions were not enough. An extra day of attack witnesses, and hundreds of additional questions—often asking the same questions over and over again—were then submitted for the record. They even went so far as to ask for a ''complete discussion'' of all conversations that then-Senator Ashcroft had with Senate leaders about any of the 1,600 Presidential nominations considered by the Senate during his term.

That is an impossible task. Nobody can recall those. The reaction was that the answers were incomplete, when they did not report all those conversations. Who of us could have done that unless we had carried a tape recorder in our pocket at all times.

To the special interest groups who invented the term ''Borking,'' I had little expectation they could or would understand or embrace the terms of civility and respect. So I expected that false charges would be leveled—repeated and repeated—in hopes that something would stick. But I had hopes that colleagues would resist those charges. Too often, they did not.

What are those false charges? One of the false charges thrown against John Ashcroft was that he could not be entrusted to enforce laws with which he personally disagrees. Now, Janet Reno opposed the death penalty, yet she was trusted to follow the law. Now, 8 years later, why is it that with John Ashcroft, a conservative and committed Christian, doubts are aired—and given credence—about his ability to enforce the law?

Some activists who claim to embrace and promote religious diversity and tolerance seem unable to extend their beliefs to a conservative Christian. I thought we broke that barrier when John F. Kennedy became President and we saw the obvious that he did not put his Catholic beliefs above the law of the land. And what of our colleague JOE LIEBERMAN, whose candidacy for Vice President and his public religious utterances tore down even more barriers? Should religious diversity and tolerance be extended only to some religions and not others? What we see in this part of the smear campaign against John Ashcroft is nothing less than religious bigotry.

Second, we have seen the absolutely reckless charge that John Ashcroft opposed desegregation. Several Members have attempted to use the long, tortured and controversial school desegregation cases in the State of Missouri to color further their caricature of John Ashcroft as insensitive and an extremist. To do so, however, they have to ignore the facts of the case, the various tortured rulings, the victory in the Kansas City case, the fiduciary duty of the Attorney General and the widespread opposition to the court-ordered desegregation plan by the public and elected officials alike.

The truth of the matter is that the desegregation cases were filed in St. Louis and Kansas City in 1972, with Kansas City being litigated until 1995 and the St. Louis case being litigated until 1999. The lawsuits and the various court orders have been opposed by Democratic and Republican Governors, Attorneys General and State Treasurers and the overwhelming majority of Missourians for nearly three decades. To single out John Ashcroft and to say his positions on the case and his work was that of an extremist insensitive to the needs of Missouri school children is one of the more misleading positions ever staked out on this floor.

Since I cannot imagine that colleagues and critics would have one set of standards for John Ashcroft, and another for those in their own party, it is only fitting that we review the whole record of the day.

In September of 1981, in response to the controversial Eighth Circuit decision, the current Minority Leader of the House of Representatives, RICHARD GEPHARDT, introduced a constitutional amendment to ban court ordered busing to achieve racial integration. Congressman GEPHARDT was also a sponsor of legislation to bar federal courts from mandating busing as a remedy for segregated schools. In explaining his legislation, the esteemed minority leader called busing for desegregation ''a total failure'' and called the court-ordered busing program in the St. Louis schools ''an obscenity and a crime against the youth of St. Louis.'' About the same time, again while Senator Ashcroft was Missouri Attorney General, Missouri Senator Tom Eagleton, my predecessor, stated publicly that he ''personally opposes court ordered busing'' and did not believe the St. Louis plan would work. While in the Senate he fought the Department of Health, Education and Welfare practice of denying funding to school districts that do not have a school desegregation plan in place.

Beyond that, both Missouri State Treasurers who served while John Ashcroft was Attorney General, both of whom were Democrats, opposed the court ordered desegregation. In fact, the second of those Treasurers, the late Mel Carnahan, was highly critical of both Attorney General Ashcroft and me for the handling for the desegregation case. He was not critical of anyone opposing the plan, rather he felt the Attorney General was not being aggressive enough in the fight. In 1981, he told UPI, ''In my opinion, they have not staffed up and produced in this case and that's the reason we're where we are today on desegregation.''

And in 1983, as he was gearing up to run for Governor, Treasurer Carnahan even took the unusual action of requesting a state appropriation so that the Treasurer's office could join the case, initiating new litigation against the federal court order desegregating the St. Louis schools. The Treasurer said the desegregation payments represented ''burdensome demands on the taxpayers of the state.'' He further stated ''my staff and I have been intensely studying the financial problems created for the State of Missouri by the court orders in the St. Louis desegregation case. It is my intention to file additional actions or motions directed to testing the issues of state liability for payments . . . I plan to use outside counsel for a separate additional effort to supplement and complement the efforts of the Attorney General to reverse or modify the orders as to state financial liability.''

As Governor, I refused to support the appropriation because it was the job of the Attorney General to handle legal matters that impact the state. But that statement by the state Treasurer, a Democrat and future Governor, shows that John Ashcroft was clearly in the mainstream and representing the people of the state in a complicated and controversial legal matter. Unless of course Mel Carnahan was an extremist too. The strong democratic opposition did not stop in the eighties but continued right on through the '98 election cycle. In fact, the current Missouri Attorney General, Democrat Jay Nixon, made opposition to state involvement in school desegregation a platform of his first campaign for Attorney General, calling busing ''a failed social experiment'' that must end in the State of Missouri. And he criticized Ashcroft and Webster, the two previous Attorneys Generals by stating ''The republican team hasn't been fighting the battle against unfair desegregation payments; they've been losing it.'' ''We need new and better lawyers to win the case.''

Upon taking office, Nixon filed suit to end state involvement in the St. Louis desegregation case and filed suit to overturn a court decision in Kansas City. Shortly after that he appealed and fought the Kansas City plan all the way to the United States Supreme Court. In St. Louis, he criticized the appointment of a well respected St. Louisan appointed to negotiate a settlement. He even filed suit on the eve of the beginning of the school year to bar student participation in a St. Louis city-county transfer program.

Former Congressman Bill Clay, in a letter to President Clinton, sharply criticized the Democratic Attorney General as ''waging unremitting warfare'' against the court orders which ''provided educational opportunity for many thousands of students in St. Louis''. Nixon was also repeatedly criticized by the St. Louis chapter of the NAACP for his efforts. In 1995, the group said those efforts ''will wipe out the gains made by desegregation and deprive city parents of opportunities they now have to better their children's education''. The Kansas City Star said this Attorney General ''climbed over the backs of African Americans'' to advance his career.

Yet when this man wanted again to advance his political career, was the Senator from Massachusetts condemning his actions? Quite to the contrary, the Senator from Massachusetts was actively promoting his political career, even headlining a fund raiser for him here in Washington. Nor can I imagine the Senator labeling the positions of Congressman GEPHARDT, former Senator Eagleton, and the late Governor Carnahan, whose campaign the Senator from Massachusetts supported, as extreme. The hypocrisy could not be clearer. And leads us back to those guiding principles of this entire effort against John Ashcroft—by

any means necessary, and spend whatever it takes.

The third charge centers around his handling of the nomination of Judge Ronnie White. Much has been said about this, but let me simply say that the emotional power and pain of the Johnson case remains as strong today as it was 10 years ago when the brutal murders tore apart the lives of 4 families and their communities.

For all my colleagues who agreed with Judge White's reasoning that would have tossed out the conviction and granted a new trial to the triple cop-killer who also killed the sheriff's wife right in front of her 8 year old daughter; for those who agreed with his lone dissent that Johnson's lawyers didn't do a good enough job so he deserves a new trial—I would hope they would channel their strong views and weigh in with Missouri's Governor in seeking a commutation of his death sentence. Johnson's appeal to the U.S. Supreme Court has been denied and he now sits on death row. I can certainly provide any of you the correct address of the Governor in Jefferson City.

Finally the latest attempt to smear—so weak that's it more of a smudge—was made by a democrat activist who claimed that 16 years ago John Ashcroft asked a legal but inappropriate question during a job interview. Quickly refuted by others present in the interview this attempted smear fades from view, but again takes time and energy to respond to. And when all one's energy is spent knocking down false charges it is hard to find the time to talk about what you believe can be accomplished at the Justice Department—which of course is what the people of America are really interested in. How will you do the job? What are your plans to improve the lives and opportunities for all Americans?

So where does all this leave us? Back where we started.

A conservative, pro-life, Christian simply isn't fit to serve according to the litmus test of a bunch of left-wing groups. And rather than admit it, the smokescreen of false charges must be used to justify their own intolerance. It is a sad day that we have come to this. But through it all John Ashcroft has stayed firm. Firm in his belief that in America our sense of fairness will outweigh short term political gain. Firm in his belief that while his attackers have been shameless and unrelenting, that he should not, and will not respond in kind.

I am so proud of John Ashcroft. I am proud of his service to Missouri and the nation over the last 28 years. At each level of responsibility, he not only acquitted himself as a gentleman and good American, but he did great work on behalf of so many citizens. That is true of his terms as Missouri Attorney General. As Governor. And United States Senator. He is a fine man. He is a gentleman. A good man of deep conviction who will do great service on behalf of all Americans as our next Attorney General. So I am also very proud that a fellow Missourian will become the next Attorney General of the United States of America. But perhaps most of all, I am proud to be able to call John Ashcroft my friend.

I yield the floor.

Mr. NELSON of Nebraska. Mr. President, today I will vote to confirm former Senator John Ashcroft as Attorney General of the United States. The President of the United States has the constitutional authority to nominate those individuals he thinks will most ably advise him; therefore, I give President Bush latitude in choosing the members of his Cabinet. My role in this process, as defined by the Constitution, is to give my advice and consent to the President on his nominees for Cabinet positions. In keeping with that duty, I want to present a clear explanation as to why I will vote to confirm the President's choice for Attorney General.

I have known John Ashcroft for well over 10 years. We both have had the honor to serve as the Chief Executive for our respective States. We were even colleagues for 2 years when our terms as Governor overlapped. I am familiar with his philosophy and his viewpoints and though we do not see eye-to-eye on every issue I respect him as a person and consider him a friend.

But before my statement is dismissed as a rubber stamp approval, let me be clear: My vote to confirm Senator Ashcroft is not without some concerns. I am disappointed with his decision to accept an honorary degree from Bob Jones University, an institution that has become a national symbol for racial and religious intolerance, without any acknowledgement or discussion let alone repudiation of that school's policies that were egregious. And secondly, his handling of the Judge White nomination was considered by many of his former colleagues to have been unfair.

But these two instances, while troubling, are not disqualifying. For me this vote today is an affirmative vote as a prologue to the future rather than a reaction to the past. This is supported by his pledge he made at his confirmation hearing to serve as Attorney General for ''all the people.''

I take Senator Ashcroft at his word when he says, and I quote, ''I understand that being Attorney General means enforcing the laws as they are written, not enforcing my own personal preferences. It means advancing the national interest, not advocating my personal interest.'' Throughout his confirmation hearing, Senator Ashcroft was unequivocal and unwavering with respect to the manner in which he would serve, if elected, as Attorney General.

Additionally, yesterday I spoke to Senator Ashcroft and expressed my reservations and concerns. In that conversation, he reiterated his commitment to lead a professional and nonpartisan Justice Department, and assured me of his intention to honor his pledge.

For me, this affirmative vote is not about politics; it is about potential and opportunity. If Senator Ashcroft is a man of integrity—which he says he is and which I believe him to be—then he will uphold his constitutional duty, prove his nay-sayers wrong, and work tirelessly to help ensure justice for all. Indeed, the stakes are high, but that is exactly where Senator Ashcroft has put them. I look forward to working with him and to helping him keep his unequivocal promise to the American people.

Mr. SMITH of New Hampshire. Mr. President, Senator Ashcroft has received broad bipartisan support from a number of organizations. I ask unanimous consent that a list of 332 organizations supporting Senator Ashcroft be placed in the RECORD.

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

332 ORGANIZATIONS ENDORSING JOHN ASHCROFT FOR U.S. ATTORNEY GENERAL

(Compiled by the Free Congress Foundation)

48th Ward Regular Republican Organization (Chicago), 60 Plus Association, A Choice for Every Child, Adirondack Solidarity Alliance, Alabama Citizens for Life, Alabama Policy Institute, Alaska Catholic Defense League, Alaska Right To Life, America's Survival, Inc., American Association of Christian Schools, American Association of Pro-Life Obstetricians and Gynecologists, American Center for Law and Justice, American Civil Rights Coalition, American Civil Rights Union, American Conservative Union, American Council for Immigration Reform, American Decency Association, American Family Association, American Family Association of Arkansas, American Family Association of Colorado, American Family Association of Kentucky, American Family Association of Michigan, American Family Association of Mississippi, American Family Association of New Jersey, American Family Association of New York, American Family Defense Coalition, California Central Coast Chapter.

American Freedom Crusade, American Immigration Control, American Land Rights Association, American Policy Center, American Pro-Constitutional Association, American Renewal, American Shareholders Association, Americans for Ashcroft, Americans for Military Readiness, Americans for Tax Reform, Americans for the Right to Life, Americans for Voluntary School Prayer, Americans United for the Unity of Church and State, Arkansas Family Council, Association of American Educators, Association of American Physicians and Surgeons, Association of Christian Schools International, Association of Concerned Taxpayers, Association of Maryland Families, Baptist International Missions, Inc.

Brass Roots, BrotherWatch, California Public Policy Foundation, California Republican Assembly, Calvary Baptist Academy, Campaign For California Families, Capital Research Center, Catholic Citizens of Illinois, Catholicvote.org, Center for Military Readiness, Center for Pro-Life Studies, Center for Reclaiming America, Center for the Study of Popular Culture, Christian Coalition of Alabama, Christian Coalition of America, Christian Coalition of California, Christian Coalition of Florida, Christian Coalition of Georgia, Christian Coalition of Maine, Christian Coalition of Montana, Christian Coalition of Ohio, Christian Coalition of Rhode Island, Christian Schools of Vermont, Christian Voice.

Christus Medicus Foundation, Citizen Soldier, Citizens Against Government Waste, Citizens Against Higher Taxes, Citizens Against Homicide, Citizens Against Repressive Zoning, Citizens for a Sound Economy, Citizens for Community Values, Citizens for Constitutional Property Rights, Citizens for Excellence in Education, Citizen for Law and Order, Citizens for Less Government, Citizens for Traditional Values, Citizens United, CNP Action, Inc., Coalition for Better Community Standards, Coalition for Constitutional Liberties, Coalition for Local Sovereignty, Coalition on Urban Renewal and Education, Coalitions for America, Colorado Association of Christian Schools.

Committee for a Republican Future, Concerned Citizens Opposed to Police States, Concerned Women for America, Concerned Women for America of Colorado, Concerned Women for America of Kansas, Concerned Women for America of Mississippi, Concerned Women for America of New Jersey, Concerned Women for America of North Carolina, Concerned Women for America of N.E. Texas, Concerned Women for America of S.E. Texas, Concerned Women for America of Utah, Concerned Women for America of Virginia, Connecticut Eagle Forum, Conservative Caucus, Inc., Conservative Party of New York State, Conservative Party of Ontario County, New York, Conservative Victory Funds, Constitution Party of Vermont, Coral Ridge Ministries, Coral Ridge Ministries Media, Inc., Council of Conservative Citizens, Inc., Crime Victims United of California, Culture of Life Foundation, Cutting Edge—A Talk Show, Defenders of Property Rights, Delaware Christian Coalition, Delaware Home Education Association, D.T. Crime Victims Bureau.

Eagle Forum, Eagle Forum of Alabama, Eagle Forum of Alaska, Eagle Forum of Arkansas, Eagle Forum of California, Eagle Forum of Georgia, Eagle Forum of Mississippi, Eagle Forum of New Jersey, Eagle Forum of North Carolina, Eagle Forum of Ohio, Eagle Forum of Oklahoma, Eagle Forum of Rhode Island, Eagle Forum of South Carolina, Eagle Forum of Wisconsin, Eastern Orthodox Women's Council of Greater Bridgeport, English First, Environmental Conservation Organization, Erie Citizens Against Pornography, Evergreen Freedom Foundation, Families Allied for Intelligent Reform of Education, Families and Friends of Murder Victims, Family Association of Kentucky, Family First, Nebraska, Family Life Communications, Family Policy Network, Family Research Council, Family Research Forum of Wisconsin.

Family Research Institute of Wisconsin, Family Taxpayers Network, Florida Eagle Forum, Inc., Focus on the Family, Fraternal Order of Police, Freedom Alliance, Friends of Oregon, Georgia Report, Global Evangelism Television, Government Is Not God—PAC, Graham Williams Group, Granite State Taxpayers, Guardians of Education for Maine, Hawaii Christian Coalition, Heritageridge Church and School, Home Education Radio Network, Home School Legal Defense Assoc., Human Life Alliance, Illinois Assoc. of Christian Schools, Illinois Citizens for Life, Illinois Right to Life Committee, Independent Women's Forum, Indiana Eagle Forum, Information Radio Network, Institute for Justice, Int'l. Assoc. of Chiefs of Police, Iowa Family Policy Center, Islamic Institute Foundation.

Justice Against Crime, Justice for Murder Victims, Kansas Conservative Union, Kansas Eagle Forum, Kansas for Life, Kansas Taxpayers Network, KBRT AM 740 (Costa Mesa, CA), KFLR Radio (Phoenix, AZ), Landmark Legal Foundation, Landowners Assoc. of North Dakota, Law Enforcement Alliance of America, League of American Families, Liberty Counsel, Life Action League of Massachusetts, Life Advocacy Alliance, Life Coalition International, Life Decisions International, Life Issues Institute, Life Legal Defense Foundation, Los Angeles Coalition of Crime Victims Advocates, Louisiana Family Forum, Madison Project, Maine Right To Life Committee, Inc., Maryland Constitution Party, Maryland Taxpayers Association, Massachusetts Citizens for Life.

Massachusetts Eagle Forum, Massachusetts Family Institute, Medina County Christian Coalition, Memory Of Victims Everywhere, Michigan Decency Action Council, Michigan Family Forum, Minnesota Association of Christian Schools, Minnesota Christian Coalition, Minnesota Family Council, Mississippi Family Council, Missouri Eagle Forum, MKL Associates, National Alliance Against Christian Discrimination, National Association of Christian Educators, National Association of Korean Americans, National Assoc. of Muslim American Women, National Center for Constitutional Studies, National Center for Home Education, National Coalition for the Protection of Children and Families, National District Attorneys Association, National Federation of Republican Assemblies, National Institute of Family and Life Advocates, National Law Enforcement Council, National Legal and Policy Center, National Legal Foundation, National Liberty Journal, National Organization for Women—Dulles Area, National Rifle Association, National Sheriffs' Association, National Tax Limitation Committee.

National Taxpayers Union, National Troopers Coalition, Neighborhood Research/Mountaintop Media, Nevada Eagle Forum, Nevada Republican Assembly, New Hampshire Right to Life, New Jersey Christian Coalition, New Jersey Family Policy Council, New York Eagle Forum, North Carolina Christian School Association, North Carolina Conservatives United, Northern Virginia Republican Action Committee, Northwest Legal Foundation, Oklahoma Council of Public Affairs, Oklahoma Family Policy Council, Old Dominion Association of Church Schools, Open Door Baptist Church, Operation Rescue, Operation Save America, Organized Victims of Violent Crime, Orthodox Union, Parents in Control, Parents Requesting Open Vaccine Education, Parents Rights Coalition of Massachusetts, Pennsylvania Family Institute.

Pennsylvania Landowners Association, Pennsylvania Republican Assembly, People Advancing Christian Education, Personal Request, Project 21, Pro-Life Action League, Pro-Life America, Pro-Life Ohio, Property Rights Congress, Providence Foundation, Religious Freedom Coalition, Republican Liberty Caucus, Republican National Coalition for Life, Republican National Hispanic Assembly (Dallas County), Republican Platform Committee, Republicans Against Pornography, Right To Life of Cincinnati, Save America's Youth, Second Amendment Sisters, Small Business Survival Committee, South Dakota Family Policy Council, South Dakota Shooting Sports Association, Southern Baptist Convention, Sovereignty International, Speaking the Truth in Love Ministries, St. John County Private Property Rights Group.

Taxpaying Adults, Teen-Aid, Inc., Tennessee Association of Christian Schools, Tennessee Eagle Forum, Tennessee Republican Assembly, Texas Eagle Forum, Texas Home School Coalition, Texas Journal, Texas Public Policy Foundation, The Alliance for Traditional Marriage and Values, The American Family Policy Institute, The American Pistol and Rifle Association of Vermont, The Armstrong Foundation, The Center for Arizona Policy, The Center for Equal Opportunity, The Center for Security Policy, The Christian Civic League of Maine, The Constitutional Coalition, ''The Don Kroah Show'' (WAVA Radio), The Family Council, The Family Foundation, The Family Foundation (Kentucky), The Family Institute of Connecticut, The Federalist.

The Greenfield, Tennessee Movement To Impeach Federal Judge John T. Nixon, The National Center for Public Policy Research, The Niobrara Institute, The Patrick Henry Center for Individual Liberty, The Strategic Policies Institute, Toward Tradition, Tradition Family, Property, Inc., Traditional Values Coalition, U.S. Family Network, United Seniors Association, United Seniors Association of Lee County, United States Justice Foundation, U.S. Business and Industry Council, Utah Eagle Forum, Utah Republican Assembly, Victims and Friends United, Watchdogs Against Government Abuse, We the People Congress, We the People Foundation, Weld County Republicans, Well of Living Water, West Virginians Against Government Waste, Whatcom County Republican Party, Wisconsin Information Network, Wisconsin State Sovereignty Coalition, Young America's Foundation, Young Americans for Freedom.

Mr. CORZINE. Mr. President, I rise in opposition to the nomination of John Ashcroft to be Attorney General.

I have given a great deal of thought to this nomination and have considered it very seriously. As a new Senator, I did not serve with Senator Ashcroft, so I do not know him personally. However, I personally attended the nomination hearings and listened carefully to the testimony. I also reviewed many of the statements prepared by supporters and opponents of the nomination, and heard from a large number of my constituents in New Jersey.

After considering all the facts, I concluded that Senator Ashcroft, while in many ways a very fine and distinguished public servant, simply is not the right person for the job. Let me take a few moments to explain my thinking.

In general, I believe that a President's choice for a Cabinet position deserves deference. However, the position of Attorney General deserves special scrutiny. As head of the Justice Department, the Attorney General has the unique responsibility to interpret the law on behalf of the executive branch, to investigate and prosecute suspected criminals, to uphold our civil rights laws, to represent the government before the Supreme Court through the Office of the Solicitor General, and to manage immigration, among many other critically important responsibilities. In addition, the Attorney General, while serving the President, also must maintain a degree of independence from politics, so that he or she can pursue wrongdoing within the government. The Attorney General is the people's lawyer. For all these reasons, it is imperative that the Attorney General be an individual not only of unquestioned personal integrity, but someone who will be broadly perceived as administering justice and enforcing the law fairly and impartially for all people.

Unfortunately, after examining Senator Ashcroft's record, I have serious

concerns about whether as Attorney General he would be able to set aside his long-standing and strongly held views and perform his duties in a fully objective, fair and impartial manner.

I base this conclusion on several prior instances in which Senator Ashcroft's view of the law and the facts seem to have been heavily biased and colored by his ideology. Perhaps most importantly, in 1997, he led the opposition to Judge White of the Missouri Supreme Court by making a series of accusations that were inaccurate. For example, he claimed that Judge White opposed the death penalty and believed that ''it apparently is unimportant . . . how clear the evidence of guilt.'' This was very unfair, as Judge White voted to affirm death sentences in the vast majority of cases that had come before him, and had unequivocally assured the Judiciary Committee that he was prepared to impose the death penalty. In fact, in the case that Senator Ashcroft used to criticize Judge White, the Judge's decision was based not on opposition to the death penalty, but on a reasoned analysis of serious constitutional problems that he believed had prevented the defendant from receiving a fair trial. This was a clear example of Senator Ashcroft's ideology coloring his interpretation of the facts.

Senator Ashcroft's strong ideological approach also seemed to skew his views in the case of Bill Lann Lee, a nominee to head the Civil Rights Division of the Department of Justice. Senator Ashcroft said he voted again Lee because of ''serious concerns about his willingness to enforce'' a Supreme Court decision limiting preferences for minority companies in awarding government contracts, and the Senator adopted a highly restrictive interpretation of that decision, challenging Mr. Lee's interpretations of the Court's instructions and guidance. However, this challenge appears to have been based on Senator Ashcroft's own ideological opposition to affirmative action, not the law or the Court's direction.

In another case, when he served as attorney general of Missouri, Senator Ashcroft sought to invalidate a State law that authorized nurses to engage in various practices, including the dispensing of contraceptives. Senator Ashcroft, a strong opponent of abortion, argued that this was unconstitutional. Yet there was no constitutional authority for this position, and it was rejected by the Missouri Supreme Court on a unanimous vote. Again, Senator Ashcroft's strongly held ideological views had skewed his views of the law and led to a highly subjective and biased conclusion with little objective merit.

These are just a few of many examples in which Senator Ashcroft demonstrated an inability to move beyond his own views and reach a fair, objective and balanced conclusion about the merits of a legal position. If history is any guide, his enforcement of the law will be seriously biased by his ideological views. This, in my view, disqualifies him for a position as Attorney General, for which fairness, objectivity and balance are perhaps the most important qualities. In a period in our nation's history in which we need to come together after a divisive election, I believe it would be a mistake to select an Attorney General whose tendency to view the law ideologically could aggravate our nation's divisions.

For all these reasons, I oppose this nomination.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that the following editorial that appeared last week in the Arkansas Democrat-Gazette regarding the nomination of Senator John Ashcroft to be the next Attorney General appear in the CONGRESSIONAL RECORD.

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

[From the Arkansas Democrat-Gazette, Jan. 23, 2001]

TED KENNEDY'S AMERICA—THE NEW MCCARTHYISM

Is anybody surprised that the senator who made Bork a verb is looking for ways to derail John Ashcroft's confirmation as attorney general? And Ted Kennedy knows just how to do it: Talk it to death. He says he may lead a filibuster against the nominee. It'd be an historic first—and an historic low.

Ted Kennedy has a way of being first, and low. The first to get to a party, the first to abandon a car submerged under water with a young lady still in it, the first to leave the scene of an accident. Some of us remember another of Mr. Kennedy's firsts: His classic War of the Worlds performance during the Senate's hearing on Robert Bork's nomination to the Supreme Court. In the 1930s Orson Welles reported an invasion from Mars; Ted Kennedy imagines an invasion from the neolithic Right.

Speaking in the well of the Senate, he envisioned Robert Bork's America as one where ''Women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police would break down citizens' doors in midnight raids.'' It all made 1984 look kind of warm and homey.

The intensity of the fight over Robert Bork's confirmation, and the acrimony it sparked, didn't come without warning. It was billed in advance as a battle of virgin ideologies—the far, far left versus the far, far right, each side too pure to give quarter to the other. It hardly surprised that ultra-liberal Ted Kennedy would come out swinging against ultra-conservative Robert Bork. What surprised—and appalled—was the senator's neo-McCarthyisms.

In Ted Kennedy's America, you no longer ruin people's character by calling them Communists. You call them racists. Or just imply it. Robert Bork was morphed from a respected, if very conservative, judge to a kind of American Nazi. Ted Kennedy and hysterical company had no more evidence of Judge Bork's racism than Joe McCarthy had the goods on George Marshall. But that's the strategy of the witch-hunter: Indict first, then the other guy has to prove he's not guilty—that he's stopped beating his wife. It's called shifting the burden of proof.

Ted Kennedy isn't waving a list of Communists in the State Department, la Machine Gunner Joe, but a list of racists in the next Cabinet. At the top is one John Ashcroft, former attorney general, governor, and United States senator from Missouri. And seg, if you can believe Ted Kennedy.

During last week's hearing, Senator Kennedy accused John Ashcroft of fighting desegregation and voter registration. Even for the U.S. Senate, the message wasn't subtle: John Ashcroft's America would also be one of segregated lunch counters. This is the same John Ashcroft who appointed more African American judges than any other governor in Missouri. The same John Ashcroft who signed the Martin Luther King holiday into law. The same John Ashcroft who appointed the first black judge to that state's court of appeals. And the same John Ashcroft who signed the first Missouri hate-crimes law as governor, and then voted for 26 out of 28 African American judicial nominees as a U.S. Senator.

John Ashcroft seems to have failed at being a racist as completely as Ted Kennedy has at being a civil leader of the opposition. To quote a former Democratic senator, Bob Kerry: ''I think John Ashcroft is colorblind. That's one of the good things that comes from his religious belief.'' But being colorblind is the worst things you can be in Ted Kennedy's America. If you dare embrace Martin Luther King's dream—that one day all Americans will be judged not by the color of their skin but by the content of their character—you're a racist.

John Ashcroft learned this the hard way after he opposed His Honor Ronnie White's appointment to the federal bench in 1999. He made the mistake of judging the nominee's record without considering the color of his skin. He felt Judge White had dissented from one too many death sentences. It was a clash of philosophy, not a racial preference.

But in Ted Kennedy's America, race is a philosophy. His is a country where Colin Powell is tarred as an Uncle Tom, and Bill Clinton is hailed as Our First Black President. ''In my view,'' Ted Kennedy declared, ''what happened to you is the ugliest thing that's happened to any nominee in all my years in the United States Senate.'' He wasn't addressing Robert Bork, but Ronnie White.

There are times when the irony is so thick in Washington, it becomes farce. Please note that Ted Kennedy voted against Clarence Thomas, a conservative who still managed to become a justice of Supreme Court of the United States. Nobody insinuated that Senator Kennedy based his vote on Clarence Thomas' race, which happens to be African American. He voted against Justice Thomas because he opposed the conservative jurist's philosophy, which he had every right to do. But he won't recognize the same good faith in John Ashcroft.

For all the talk of the New Civility in Washington, we're back to the old incivilities. The politics of personal destruction? We have sunk even lower—to the politics of national division. It wouldn't be the first time: Joe McCarthy, like Ted Kennedy, was an aimless demagogue who drank a lot.

What was disturbing was not the man but the -ism. It allowed Joe McCarthy to be seen as the representative of the American way, rather than a freakish exception. The junior senator for Wisconsin was a political accident who never had the sense of purpose to be really dangerous. In the end, the clumsy oaf sabotaged the Right, not the Left. He made anti-communism, not communism, suspect.

Now the McCarthyites of the Left was poised to do the same dubious service for their political persuasion. The more hysterical they sound, and the more outlandish their accusations, the more credibility they will lose. John Ashcroft's case is not the exception, but part of the trend. Remember the campaign ads that tried to associate George W. Bush with the lynching of James Byrd? The Democratic Party has found its Red Scare. Or white scare.

The party of Abraham Lincoln was to be re-cast as the party of George Wallace and Orval Faubus (who happened to be Democrats, but never mind). And Ted Kenndy now emerges as the new Joe McCarthy, sniffing out any opportunity to paint a political opponent as a racist. His victims, like John Ashcroft, are left to prove that they aren't.

Where are the Margaret Chase Smiths and Dwight Eisenhowers of the Democratic Party? The kind of people who will put country above party, and distance themselves from the demagogues? Don't look for any before 2002.

The Democrats are on the verge of taking back Congress—if they can just scare enough people. Joe McCarthy would understand.

Mrs. CARNAHAN. Mr. President, encircling the Great Seal of the State of Missouri are the words ''United We Stand; Divided We Fall.'' It is a motto that has guided our people well over the last 180 years.

In that same spirit, President Bush, at the onset of this new century, has declared that he wants to be ''uniter not a divider.''

I am deeply encouraged, for I want to join with him and the Congress to reach across the chasm of our political differences to do some hard work for the American people.

Within the Senate, we have already reached out in a spirit of bi-partisanship in structuring our committees. So far I have had the opportunity to vote in favor of all of the President's Cabinet nominees.

This was the beginning of a conciliatory course—a fragile alliance—but, nonetheless, one that I believe must mark any real progress in the 107th Congress.

But I do not believe that the nomination of John Ashcroft furthers the conciliatory tone that President Bush has set.

Senator Ashcroft has a long record of public service—a record that I brought to the attention of the Judiciary Committee when I introduced him. But in the end, I must determine if that record makes him suitable to be the United States Attorney General.

Had Senator Ashcroft been nominated for any other Cabinet post, I could have easily supported him. His credentials or faith are not in dispute here, nor should they ever be. Rather, it is the conflict that his words and deeds have generated throughout his public career.

Given the sweeping discretionary power of this position, I do not believe that the office of Attorney General of the United States is the right job for Senator Ashcroft.

When asked by my colleagues about this nomination, I urged them to ignore their personal relationships and political considerations. Instead, I called on them to vote their conscience. I must do the same.

Regrettably, I am unable to provide my consent for this nomination.

I am compelled by principles and beliefs I shared with my husband for over forty years in public life, including the belief that we should do all in our power to bring people together rather than drive them apart.

The call of conscience must supersede all others. It is the only reliable anchor in the tempestuous sea of public life.

In casting this vote, I do so knowing that John Ashcroft will likely be confirmed. I wish him every success. I hope he will take these votes of dissent as they are intended: not as acts of spite or recrimination, but as pleas for healing and harmony.

While I must withhold my vote on his confirmation, I pledge my support on all matters that he and the President pursue in the interest of a more just and peaceful nation.

Mr. ENZI. Mr. President, I rise today in support of the confirmation of my friend and former colleague, Senator John Ashcroft, to be Attorney General of the United States. As a man of the highest integrity, experience, and ability, Senator Ashcroft is uniquely qualified to serve as our nation's premier law enforcement officer and the administrator of one of the federal government's largest agencies.

Senator Ashcroft's qualifications for the position of Attorney General have been well documented on the floor and I only need mention them in passing: law professor, State auditor, two-term Attorney General, two-term Governor, and United States Senator from the State of Missouri. Such a record of public service spanning such a period of years demonstrates the great trust and admiration the people of Missouri have placed in Senator Ashcroft over nearly 30 years.

What has impressed me about Senator John Ashcroft's record is not only the length of public service, but the breadth of this experience as well. There is no doubt that the ideal candidate for the position of attorney general is someone who has a good grasp of the law and a true dedication to enforce that law. However, the job entails a great deal more than that. In fact, the attorney general needs to be a good manager to oversee the 125,000 employees of the Department of Justice in departments as diverse as the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Federal Bureau of Prisons. Senator Ashcroft's sixteen years as an executive in Missouri, first as State attorney general and then as Governor, have made him uniquely qualified to manage one of the largest federal agencies. Moreover, his service with us in the United States Senate and his involvement on the Senate Judiciary Committee have prepared him to work closely with Congress in enforcement and development of Federal law.

In addition to Senator Ashcroft's remarkable credentials to serve as United States Attorney General for all Americans, I would like to remark on his particular interest and experience in the crime issues facing rural communities. As many of my colleagues know, in the past several years rural America has witnessed an explosion in illegal methamphetamine use, especially among our nation's youth. Nationwide, meth use increased 60% between 1992 and 1999 among America's high school seniors. Unfortunately, the story is much bleaker in our rural communities. In my own State of Wyoming, methamphetamine investigations increased 600% between 1992 and 1998. Like all illegal drug abuse, meth abuse tears at the very fabric of society by destroying families, increasing violent crime, and dashing the dreams and promise of all too many of our nation's youth.

While the battle against meth use and trafficking is primarily a State responsibility, there is a role for the federal government by supplying resources for law enforcement training, meth lab cleanup, and education and prevention programs to help parents and teachers teach children the dangers of meth. Senator Ashcroft was a true leader in recognizing and furthering a limited, focused role for the Federal Government in the battle against methamphetamine use and trafficking. In 1999, Senator Ashcroft introduced legislation to combat this problem. While I knew that Missouri had faced many of the same problems faced in Wyoming, I was truly impressed with Senator Ashcroft's understanding of the meth problem and willingness to listen to the problems facing law enforcement in other states. Before introducing his legislation, Senator Ashcroft and his staff made a particular effort to understand the problems facing law enforcement personnel in Wyoming and incorporated our suggestions in Senator Ashcroft's legislation to help address these problems. I have to say that Senator Ashcroft's deep understanding of the greatest crime issue facing our State of Wyoming and his experience as a problem solver both as Governor of Missouri and United States Senator give me great encouragement that he will work with the Congress to address the needs of all states, not just those with large urban areas.

I must say that Senator Ashcroft's understanding and appreciation for the issues involved in the area of rural crime stands in stark contrast with my experience with the previous Administration. Law enforcement officials in my State have all too often been given the run around by the Department of Justice and the Office of National Drug Control Policy when they have attempted to pursue additional funding programs or when they have attempted to include additional Wyoming counties to the list of High Intensity Drug Trafficking Areas. In fact, in one conversation, an employee at the ONDCP told a top law enforcement officer in Wyoming that they didn't have anyone at the department that could approve new HIDTAs! I found that somewhat astonishing given that is one of the very purposes of the office of the Drug Czar. Given his track record in the State of Missouri and in the United States Senate, I have every confidence

that a Justice Department headed by John Ashcroft will pursue a coordinated approach with the Office of National Drug Control Policy and other agencies to help eliminate the red tape and ensure that our law enforcement personnel in rural states are receiving the resources they need to keep our communities safe and drug free.

We have heard a great deal of acrimony from some of the far-left interest groups over the nomination of Senator Ashcroft. Evidently these groups are intent in destroying Senator Ashcroft's reputation even if they are unsuccessful in derailing his confirmation. The attacks by these organizations are entirely unfounded and seem more designed to raise funds for the particular interest groups than to find the truth about our former colleague.

I must say that one of the charges that has been most disturbing to me is the insinuation that Senator Ashcroft will not faithfully enforce the laws of the United States because he is a devoted Christian. Not only are such charges entirely unfounded, but they smack of a religious bigotry of the most dangerous Kind. Such bigotry is nothing new, but is should be condemned in any age in which it raises its ugly head. One no less than George Washington warned against the efforts in his own day to banish religion from the public square. In his farewell address of September 29, 1796, President Washington remarked:

Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great Pillars of human happiness, these firmest props of the duties of Men and citizens.

We should pay heed to the words of our first president and disavow any effort to banish Senator Ashcroft, or any other public servant, from public life because of his or her religious beliefs.

The founders were well aware of the dangers inherent in applying religious tests to the holding of public office. That is why they included a specific prohibition to any such practice in Article six of the Constitution where they said ''no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States''. Rather than ask that Senators apply an explicit test such as that prohibited in Article six, the far-left special interest groups that oppose Senator Ashcroft's nomination have turned instead to rumor and innuendo to imply that anyone who has strong religious beliefs such as those held by Senator Ashcroft is incapable of enforcing federal laws with which he might not be in total agreement.

Nor surprisingly, these groups have not brought forth any specific examples where Senator Ashcroft failed to enforce the laws when he served as attorney general or governor of the State of Missouri. Instead, all the evidence seems to point to the contrary. Not only did the people of Missouri continue to elect John Ashcroft to positions of public trust, but his fellow State attorneys general and his fellow governors elected him in turn president of their respective organizations. Keep in mind that these organizations are bi-partisan and represent members from a wide spectrum of political and philosophical views. The fact that the State attorneys general and the State governors would choose John Ashcroft to head their organizations is evidence of the trust and respect that his colleagues had for his integrity, his ability, and his willingness to fairly and faithfully enforce the laws as he found them. This record stands in stark contrast to the revisionist history that has been spread in the media by groups opposed to Senator Ashcroft's nomination.

I have known Senator Ashcroft both as a colleague and a friend. He is a thoughtful and honorable public servant who has served the people of Missouri and the United States with distinction for nearly thirty years. He is dedicated to consistently and fairly upholding and enforcing the Constitution and laws of the United States. I have every confidence that Senator Ashcroft will bring dignity and integrity to the office of the Attorney General as he has to the numerous positions of public trust he has filled in the past. I urge my colleagues to join my voting to confirm Senator Ashcroft as Attorney General.

Mrs. LINCOLN. Mr. President, if there is one thing I have learned about working in Washington is that we must learn to respect and recognize our differences. I certainly expect a new President to select Cabinet nominees who share his basic beliefs and ideology. I have thus far voted to confirm every nominee that President Bush has submitted to the Senate since he took office—even those who hold positions on important issues that are different from my own. In fact, it is fair to say that I have been generally pleased with the talented and dedicated public servants President Bush has chosen to lead this Administration.

While the President retains the Constitutional authority to appoint his Cabinet, I also take very seriously my Constitutional responsibility as a Senator to provide advice and consent on his appointments. Our role in the confirmation process isn't to afix a rubber stamp on presumptive nominees, especially for a position as important as this. Unlike other Cabinet posts, Mr. President, the Attorney General is responsible for representing and defending the rights and constitutional freedoms of every American. I believe this position requires someone who understands and appreciates that not every American is born with equal access to the opportunities and blessings that make our nation great.

In my opinion, to fulfill the duties with which the Attorney General is entrusted, the nominee must be pro-active in his pursuit against discrimination and injustice as the law demands. Successfully defending the rights of every citizen ultimately depends upon the wide discretion an Attorney General exercises to initiate investigations, establish Task Forces and prosecute wrongdoers.

After reading Senator Ashcroft's response to the questions I submitted together with his testimony before the Senate Judiciary Committee, I am reasonably confident he is prepared to react to crime and injustice when it occurs. I am not convinced, however, that he is prepared to do any more when called upon to enforce a law with which he passionately disagrees. His convictions are deeply held and he has fought stubbornly for them in the past. I truly doubt that he can set them aside so easily now.

I must tell you that I am deeply moved by the constitutional role I am called upon to perform today. Passing judgement on a former colleague is extremely difficult and not a part of our normal responsibilities. I respect Senator Ashcroft as a former colleague and someone I know to be deeply committed to his religious teachings and the causes he champions. Also, I would like to add that I would gladly support his confirmation to any other Cabinet post.

In the end, though, I have concluded it is his deeply held beliefs over issues that fall directly under the jurisdiction of the Justice Department that will impede his ability to do this job—to enforce the law without bias or favor toward anyone; to vigorously fight discrimination and its painful legacy and to defend the constitutional rights he has fought so zealously to overturn in the past. Ironically, his passionate advocacy that inspires respect in me and others is what, in my opinion, makes Senator Ashcroft the wrong man for this job.

For the benefit of my constituents who hold passionate views on both sides of this issue and for my colleagues listening today, I would like to take a few moments to highlight some of the factors I considered when making my decision.

I must confess, Mr. President, when I reviewed the history of Senator Ashcroft's involvement in an effort to desegregate public schools in St. Louis, I was surprised and troubled by what I read. According to testimony presented at his confirmation hearing, Senator Ashcroft, in his capacity as Attorney General of Missouri, engaged in an extraordinary legal campaign that spanned several years to block implementation of a voluntary school integration plan in St. Louis. During the course of this litigation, Senator Ashcroft initiated numerous challenges and appeals that were firmly and repeatedly rejected by the courts. Instead of accepting the decisions rendered, he pursued a course of action that drew judicial criticism and, in one instance, a threat of contempt for failure to comply with a court order.

I believe it is one thing to vigorously assert your legal rights in a court of law. Its something else, however, for a state's top law enforcement official to display such a cavalier attitude toward the judicial branch of government. I know the issue of racial integration in public education can ignite powerful emotions. I was a young elementary school student when Helena public schools in Arkansas were integrated. This was not an easy transition at the time and it certainly left a powerful and positive impression on me that I shall never forget. So I know that honest people can disagree passionately about this issue and I don't question the personal views Senator Ashcroft may have on this matter generally. I do, however, question the judgement he exercised as a public official in this case.

As a Senator from a state that experiences difficulty in recruiting physicians and other qualified medical professionals to work in rural communities, I was also concerned by actions Senator Ashcroft took as Attorney General to restrict access to medical care in under served communities. According to the record, Senator Ashcroft issued an opinion as Attorney General of Missouri and later intervened in a court case to prohibit qualified nurses with advanced training from providing necessary and routine gynecological services to underprivileged female patients at clinics in Missouri. The medical services at issue included conducting breast and pelvic examinations, performing PAP smears and providing information about effective contraceptive practices. Furthermore, the health clinics involved were located in counties in which there was not a single physician who would accept Medicaid eligible patients for pre-natal care or childbirth.

Senator Ashcroft put the weight of his office behind an effort to declare the gynecological services at issue in this case outside the scope of practice for professional nurses in Missouri. Thankfully, for the female patients who depend on qualified medical professionals who aren't physicians to deliver necessary care, that claim was rejected in a unanimous ruling by the Missouri Supreme Court.

I am concerned about access to care because, after growing up in East Arkansas, I am well aware of the obstacles women face in obtaining the specialized medical care they need. While I respect the right of each state to establish their own standards of medical practice, I think that by going to court against the nurses of his state, Senator Ashcroft displayed a relevant degree of insensitivity on a critical issue to the persons most affected in this case.

I must tell you I'm still deeply disappointed by the way this body treated Judge Ronnie White. In my opinion, Judge White is a decent, honorable man who deserved much better. Even though I believe Senator Ashcroft is sincere in his belief that Judge White should not sit on the federal bench, I seriously question the manner in which he acted to defeat his nomination. Now that we have all had time to review a more complete and balanced report of Judge White's record, I am confident the Senate would not make the same mistake again. In fact, Senator Ashcroft has received the same kind of deference and fair treatment that I wish he had shown Judge White.

I was taught at an early age that public service is a high calling and a noble profession. In accordance with that belief, it is essential that we in the Senate discharge our responsibility to consider nominations in a manner that encourages the most talented and qualified individuals to seek employment in the public sector. I am confident that the Senate fell short of that standard in this case.

Taken together—the battle waged over desegregation in St. Louis, the attempts to stop nurses from providing basic medical services to underserved patients and the decision to defeat the nomination of a qualified nominee who deserved better—these instances and other facts in the record lead me to conclude that Senator Ashcroft will further divide our country on these sensitive issues.

I encourage the President to consider another nominee who will help him heal these wounds, not open them anew. In the alternative, I hope our new President will work to heal the wounds inflicted by this nomination on the Senate, the Presidency and our nation so that we can move forward to address the problems of all Americans in a bipartisan way.

Mr. KYL. Mr. President, I rise in strong support of the nomination of John Ashcroft to be the U.S. Attorney General.

Senator Ashcroft has superb legal qualifications. He was educated at Yale and the prestigious University of Chicago law school. While in the U.S. Senate, he served on the Judiciary Committee and chaired its Subcommittee on the Constitution.

Senator Ashcroft is also the most experienced nominee for U.S. Attorney General in American history. He served as Missouri's attorney general, its governor, and, of course, one of its U.S. Senators. Since the founding of the nation, none of the previous 66 Attorneys General had his level of experience.

Opponents have offered a number of reasons for their opposition. I would like to take this opportunity to respond.

First, what should the standard for confirmation be? The general rule for confirmation of Justice Department nominees was well-stated by Senator LEAHY in connection with President Clinton's nomination of Walter Dellinger to be head of the Office of Legal Counsel at the Department of Justice:

> The Senate has a responsibility to advise and consent on Department of Justice and other executive branch nominations. And we must always take our advice and consent responsibilities seriously because they are among the most sacred. But I think most Senators will agree that the standard we apply in the case of executive branch appointments is not as stringent as that for judicial nominees. The President should get to pick his own team. Unless the nominee is incompetent or some other major ethical or investigative problem arises in the course of our carrying out our duties, then the President gets the benefit of the doubt. There is no doubt about this nominee's qualifications or integrity. This is not a lifetime appointment to the judicial branch of government. President Clinton should be given latitude in naming executive branch appointees, people to whom he will turn for advice. I should also note that his nomination went through the Judiciary Committee—by no means a rubberstamp—unanimously.
>
> The recent debate over Walter Dellinger is another instance of people putting politics over substance. Yes, he has advised and spoken out about high-profile constitutional issues of the day. I would hope that an accomplished legal scholar would not shrink away from public positions on controversial issues, as it appears his opponents would prefer. One can question Professor Dellinger's positions and beliefs, but not his competence and legal abilities.

This is the standard that is traditionally applied and it is the proper standard. While acknowledging that presidents are ordinarily entitled to deference in the selections for their cabinet, in the nomination of John Ashcroft critics argue that they are justified in applying a tougher standard for confirmation because of the standard that Senator Ashcroft allegedly used in evaluating Bill Lann Lee to head the Civil Rights Division of the Department of Justice. In considering Bill Lann Lee, Senator Ashcroft had said that Lee was ''an advocate who is willing to pursue an objective and to carry it with the kind of intensity that belongs to advocacy, but not with the kind of balance that belongs to administration . . . his pursuit of specific objectives that are important to him limit his capacity to have the balanced view of making the judgments that will be necessary for the person who runs [the Civil Rights] Division.''

Some Democrats say that because John Ashcroft applied this ''standard'' to Bill Lann Lee, they are justified in applying the same standard to John Ashcroft. First, this is not a standard, but a conclusion about Lee based upon his record and testimony. Second, what Senator Ashcroft did on the Lee nomination was justified. Senator Ashcroft's concerns with Bill Lann Lee were based on Lee's long record of activism as a public interest lawyer. Republicans on the Judiciary Committee opposed Lee's nomination because they were justly concerned about his willingness to enforce the law as stated in Justice O'Connor's opinion for the Supreme Court in Adarand. In Adarand, the Supreme Court held that all governmental racial classifications were subject to strict scrutiny—that is, they must be narrowly tailored to serve a compelling government interest. Mr. Lee repeatedly stated the standard for

racial preferences in less strict terms. He also found that only one of the 150 current federal programs involving racial classifications would be invalid under Adarand.

Senator Ashcroft explained why he opposed Bill Lann Lee's nomination—he was concerned that Mr. Lee would not enforce the law. Senator Ashcroft testified: ''I joined with eight other Republicans on the Senate Judiciary Committee in opposing Bill Lee's nomination to be assistant attorney general because I had serious concerns about his willingness to enforce the Adarand decision . . . [Mr. Lee] was an excellent litigant, but I had concerns that he viewed the Adarand decision as an obstacle rather than as a way in which the law was defined. Adarand held that government programs that establish racial preferences based on race are subject to strict scrutiny, that is the highest level of scrutiny under the Supreme Court's equal protection clause. Adarand was a landmark decision, it was substantial, it was important. Mr. Lee did not indicate a clear willingness to enforce the law based on that decision.''

Senator Ashcroft's concerns about Bill Lann Lee proved to be well-founded. For example, in 1998, a federal judge, a Carter-appointee, assessed an unprecedented $1.8 million attorney fee award against the Civil Rights Division for a lawsuit against the City of Torrance, California. The judge found the suit ''frivolous, unreasonable and without foundation.'' The Division then turned around and filed a similar suit in Texas defending the constitutionality of contracting preferences on the basis of race and sex. Mr. Lee also continued to unlawfully coerce state and local governments to adopt race and sex preferences by threatening costly lawsuits based on dubious employment statistics.

Moreover, under Mr. Lee, the Civil Rights Division continued the legal challenge to Proposition 209, a measure that prohibited government discrimination of Californians on the basis of race, gender, or national origin. These suits continued despite the fact that Proposition 209 has repeatedly been upheld by federal courts.

It is also important to note that Bill Lann Lee had never held an executive position—or any position—in the government, whereas Senator Ashcroft served as attorney general of Missouri for eight years and as governor for eight years. He had distinguished tenures in both offices. In fact, he served as President of the National Association of Attorneys General and as Chairman of the National Governors Association and Chairman of the Education Commission of the States.

In sum, Senator Ashcroft had serious reasons for concern with the Lee nomination, and his concern was borne out. In contrast, Senator Ashcroft has not waffled, redefined, or otherwise given reason to believe that he would not apply the law as it is. While Lee continued to aggressively litigate, John Ashcroft has shown no sign that he will continue to legislate. He did not do so as Missouri Attorney General, and he would not do so as U.S. Attorney General. In fact, John Ashcroft has repeatedly stated that he will enforce the law—yet this reassurance has failed to satisfy his critics. It's a Catch-22. He has, like every nominee, said he will uphold the law; and no one has ever questioned his integrity. But when John Ashcroft pledges to uphold the law, critics say that this is a ''new'' John Ashcroft, that he has flipped and is not credible. What they are saying is that he cannot satisfy them whatever he says. John Ashcroft knows the difference between being a legislator and being an executive. He is a man of integrity. He should be taken at his word. He cannot prove a negative—that he won't fail to do his job. To hold him to that standard is to ask of him the impossible. Senators have the right to vote on any grounds they like; but they should not shroud their vote in a sham standard.

An example of setting up an impossible standard is the view by some that, because Senator Ashcroft opposes abortion he cannot by definition enforce laws such as the Freedom of Access to Clinic Entrances law—the federal criminal statute that punishes those who commit acts of criminal intimidation or violence at abortion clinics. There is no logic to this position. Senator Ashcroft's opposition to abortion does not mean that he supports violations of the law prohibiting violence at clinics. Indeed, Senator Ashcroft supports the freedom of access to clinic entrances law and stated in his written answers that he ''will fully enforce FACE.'' This reinforces the view that he has previously expressed. For example, long before he had any idea he would ever be nominated for attorney general, Senator Ashcroft wrote that, regardless of his personal views on abortion, people should be able to enter abortion clinics safely: ''I believe people should be able to enter legal abortion clinics safely. I oppose unlawfully barricading or otherwise curtailing access to legal abortion clinics. I condemn violence regarding this issue by individuals either in favor of or against abortion.'' Quoted from a May 15, 1996 letter to George Sorenson of St. Clair Shores, MI.

Senator Ashcroft opposes criminal violence at abortion clinics and believes people who commit these acts of violence and intimidation should be punished. As Attorney General he'll do just that. It is irrational for critics to vote against him in the belief that merely because he opposes abortion the won't enforce the freedom of access to clinic entrances law.

While he cannot prove a negative, he can point to past situations that belie the assertion that he won't properly apply the law. As Missouri Attorney General, John Ashcroft did not let his personal opinion on abortion cloud his legal analysis. For example, in Attorney General Opinion No. 5, issued on October 22, 1982, 1981 WL 154492, Mo. A.G., John Ashcroft opined that the Missouri Division of Health should not release to the public information from reports it maintains on the number of abortions performed by particular hospitals. He stated that the legislature made clear its intent that such reports ''shall be confidential and shall be used only for statistical purposes'' and even made failure to maintain confidentiality a misdemeanor. John Ashcroft opined that, for these reasons, and to protect the patient-physician privilege as recognized by Missouri law, access to the health data maintained by the Division was subject to review only by local, state or national public health officers.

Additionally, in Attorney General Opinion No. 127, issued on September 23, 1980, 1980 WL 115450 Mo. A.G., John Ashcroft was asked to opine on whether a death certificate was required for all abortions, regardless of the age of the fetus. Despite his personal view that life begins at conception, he stated that Missouri statutes did not require any type of certificate if the fetus was 20 weeks or less. After 20 weeks Missouri statutes specifically require a ''certificate of stillbirth'' regardless of whether death was by natural causes such as a miscarriage or an intentional act such as an abortion.

It is also worth noting that Senator Ashcroft voted for Senator SCHUMER's amendment to the bankruptcy bill that made debts incurred as a result of abortion clinic violence non-dischargeable in bankruptcy.

Finally, it is important to note that Senator Ashcroft has a strong record on women's issues, contrary to what some have charged. As governor, he signed a rape shield law that made inadmissible evidence of the victim's past sexual conduct. He also signed a law recognizing battered woman's syndrome as a defense in criminal cases. As Missouri attorney general, he took a broad view on allowing domestic violence funds to be used by non-profits to establish a network of ''safe homes.'' As Senator, John Ashcroft co-sponsored the Violence Against Women Act.

Third, opponents express concern that Senator Ashcroft does not favor stricter gun control and previously opposed some measures that are now law. As a result, they conclude he will not enforce the gun control laws. Some people may be so pinched in their opinions that they could not distinguish between these two circumstances. Not John Ashcroft.

As a former state attorney general and president of the National Association of Attorneys General, Senator Ashcroft knows how important it is to enforce gun laws vigorously. Unfortunately, the Clinton Justice Department has failed to make gun prosecutions a priority. Between 1992 and 1998, prosecutions of criminals who use a gun to commit a felony dropped nearly 50 percent from 7,045 to 3,765. Senator

Ashcroft was one of the leaders in the Senate in directing the Justice Department to increase the prosecution of gun crimes. He sponsored legislation to authorize $50 million to hire additional federal prosecutors and law enforcement officers to increase the federal prosecution of criminals who use guns. Additionally, Senator Ashcroft sponsored legislation to require a five-year mandatory minimum prison sentence for federal gun crimes and for legislation to encourage schools to expel students who bring guns to school.

Moreover, in the Senate, John Ashcroft had a strong record in fighting gun crimes. Last Congress, for example, Senator Ashcroft authored legislation to prohibit juveniles from possessing assault weapons and high-capacity ammunition clips. The Senate overwhelmingly passed the Ashcroft legislation in May 1999.

Senator Ashcroft voted for legislation that prohibits any person convicted of even misdemeanor acts of domestic violence from possessing a firearm, for legislation to extend the Brady Act to prohibit persons who commit violent crimes as juveniles from possessing firearms, for the ''Gun-Free Schools Zone Act'' that prohibits the possession of a firearm in a school zone, and for legislation to require gun dealers to offer child safety locks and other gun safety devices for sale. Senator Ashcroft also voted for legislation to close the so-called ''gun show loophole.'' This bill required mandatory instant background checks for all firearm purchases at gun shows.

Senator Ashcroft will uphold the nation's laws on firearms.

Fourth, critics question Senator Ashcroft's record or civil rights. They often begin by raising the issue of desegregation litigation in Missouri. Senator Ashcroft did defend the state of Missouri as state attorney general in a long-running school-desegregation case. Every Missouri attorney general since 1980, including Jay Nixon, John Ashcroft's Democratic successor, backed the state's (and Ashcroft's) position. According to an article in National Review, the attorneys general in Missouri,

> fought the orders because they were unjust, saddling innocent parties with exorbitant costs. They fought the orders because they were unpopular, not only with their victims, but with their beneficiaries. A leitmotif of the desegregation was the persistent splintering of minority groups from the ''class action'' litigants, whose one-size-fits-all remedies ran roughshod over the aspirations of parents for their children. . . . In Missouri, 400 other public-school districts suffered cutbacks so that a handful of attorneys for civil-rights groups and teachers unions could run uncontrolled clinical trials on a generation of urban school kids, Indeed, non-urban school officials were among the most persistent and vociferous foes of the desegregation orders.

The article continues: ''Twenty years of forced bussing, which Ashcroft opposed, left the Kansas City school district slightly less integrated than it was before. Twenty years of forced bussing, plus $3 billion, left Kansas City and St. Louis with schools that consistently rate among the poorest in the nation in reading and math skills.'' To oppose a particular court order is not, as some critics have said, to ''relentlessly oppose school desegregation.'' That characterization is unfair, even slanderous.

Another point that critics often raise is the fact that Senator Ashcroft spoke at Bob Jones University. The controversy over the Bob Jones University speech has been put to rest. At his confirmation hearings, Senator Ashcroft made it clear that he ''reject[s] any racial intolerance or religious intolerance that has been associated with[,] or is associated with[,]'' Bob Jones University. Senator Ashcroft explained that ''[he] want[s] to make it very clear that [he] reject[s] racial and religious intolerance.'' He said he does not endorse any bigoted views by virtue of ''having made an appearance in any faith or any congregation.'' He said, for example, that he has visited churches which do not ''allow women in certain roles,'' and that he does not endorse that view, either.

In the matter of the role faith plays in our public life, there appears to be a double standard. Senator LIEBERMAN made numerous speeches connecting God to American government when he was running for Vice President last year. In fact, during a campaign speech in a church in Detroit, he said he hoped his candidacy ''will enable all people . . . to talk about their faith and about their religion, and I hope it will reinforce a belief that I feel as strongly as anything else—that there must be a place for faith in American public life.'' [Newsweek 9/11/00] I share in that hope. Sadly, critics of John Ashcroft, who almost universally supported Senator LIEBERMAN, apply a different standard on this issue to John Ashcroft.

During his career, Senator Ashcroft has compiled an outstanding record of protecting the rights of all people. As governor, Fortune named him one of the top 10 education governors in the nation. John Ashcroft was an inclusive governor, signing into law Missouri's first hate-crimes statute and state holiday that recognizes Dr. Martin Luther King's birthday. He nominated the first woman to the Missouri Supreme Court.

John Ashcroft's work on behalf of minorities earned him a commendation from the Mound City Association, an African-American Bar Association of St. Louis, and a campaign endorsement from the Limelight Newspaper, the largest African-American newspaper in St. Louis.

In the U.S. Senate, John Ashcroft convened the first and only Senate hearing on racial profiling. He secured more funding to combat violence against women, voted to prohibit those who have been convicted of domestic violence from owning a gun, and supported the crime victims' rights amendment and Violence Against Women Act.

John Ashcroft has been deeply committed to promoting equal access to government positions during his tenure as both Attorney General and Governor of Missouri. Witnesses testifying at the hearing made this commitment clear.

Mr. Jerry Hunter, former labor secretary of Missouri, testified that, ''Like President-elect George W. Bush, Senator Ashcroft followed a policy of affirmative access and inclusiveness during his service to the state of Missouri as attorney general, his two terms as governor, and his one term in the United States Senate. During the eight years that Senator Ashcroft was attorney general for the state of Missouri, he recruited and hired minority lawyers. During his tenure as governor, he appointed blacks to numerous boards and commissions . . . [B]ut I would say to you on a personal note, Senator Ashcroft went out of his way to find African-Americans to consider for appointments.''

Mr. Hunter further elaborated that,

> When Governor Ashcroft's term ended in January of 1993, he had appointed more African-Americans to state court judgeships than any previous governor in the history of the state of Missouri. Governor Ashcroft was also bipartisan in his appointment of state court judges. He appointed Republicans, Democrats and independents. One of Governor Ashcroft's black appointees in St. Louis was appointed, notwithstanding the fact that he was not a Republican and that he was on a panel with a well-known white Republican. Of the nine panels of nominees for state court judgeships, which included at least one African-American, Governor Ashcroft appointed eight black judges from those panels.

Congressman J.C. WATTS testified:

> I've worked with [John Ashcroft] on legislation concerning poor communities, underserved communities. I have always found John Ashcroft to have nothing but the utmost respect and dignity for one's skin color. I heard John say yesterday in some of his testimony that his faith requires him to respect one's skin color. And I think that's the way it should be . . . [I]n my dealings with John, I have had nothing but the utmost respect for him when it comes to his dealings with people of different skin color.

Judge David Mason, who worked with Ashcroft in the Missouri Attorney General's office stated,

> As time went on, I begin to get a real feel for this man and where his heart is. When the subject of Martin Luther King Day came up, I was there. And I recall that he issued the executive order to establish the first King Day, rather than wait for the legislature to do it. Because, as you may recall, some of you, when Congress passed the holiday, they passed it at a time when the Missouri legislature may not have been able to have the first holiday contemporaneously with it. So he passed a King holiday by executive order. He said, in doing so, he wanted his children to grow up in a state that observed someone like Martin Luther King.

Bob Woodson of the National Center for Neighborhood Enterprise uses faith-based organizations to help troubled young people turn their lives around. Mr. Woodson testified:

> Senator John Ashcroft is the only person who, from the time he came into this body, reached out to us. He's on the board of Teen

Challenge. He's raised money for them. He sponsored a charitable choice legislation that will stop the government from trying to close them down because they don't have trained professionals as drug counselors. We have an 80 percent success rate of these faith-based organizations with a $60-a-day cost, when the conventional, therapeutically secular program cost $600 a day with a 6 to 10 percent success rate. Senator Ashcroft has gone with us. He has fought with us. And this legislation would help us. As a consequence, day before yesterday, 150 black and Hispanic transformed drug addicts got on buses from all over this nation and came here to support him. Fifty of them came from Victory Temple throughout the state of Texas, spent two days on a Greyhound bus at their own expense to come here to voice strong support for Senator Ashcroft.

Kay James of the Heritage Foundation testified:

The system our founders designed, of course, is famous for its many checks and balances from which no public official is immune. Nevertheless, the charge is still made that these are insufficient to deal with a man of religious conviction. As such, a person cannot be trusted to faithfully execute the laws, especially those which may conflict with his deeply held belief. I reject such religious profiling. On this matter, let me attempt to reassure John Ashcroft's opponents by enlisting the very thing they profess to fear most: his religious faith.

Fifth, opponents claim that Senator Ashcroft has a poor record on the nominations of President Clinton's nominations to the federal bench. This somehow justifies voting against Ashcroft under a standard of ''what's good for the goose is good for the gander.''

Apart from the intellectual contradiction in such a position, Senator Ashcroft's record contradicts this assertion. He supported 218 out of 230 Clinton judicial nominees, or, put another way, Senator Ashcroft supported more than 94 percent of President Clinton's nominees, many of whom were women and minorities. This is hardly a record of obstruction. Indeed, Senator Ashcroft supported 26 of the 27 African-American judges nominated by President Clinton and considered by the Senate. All other Republican senators also opposed the only one Ashcroft opposed.

That nominee was Ronnie White—nominated to the federal district court bench. Senator Ashcroft, along with the majority of the U.S. Senate, had grave concerns about White's record in Missouri death-penalty cases. White wasn't just the state's leading dissenter in death-penalty cases, he even went so far as to try (unsuccessfully) to overturn the conviction of a man who confessed to brutally murdering four people. White was the only dissenter in that case, which caused his nomination to be opposed by numerous law-enforcement groups and officers, including the National Sheriff's Association, the Missouri Federation of Police Chiefs, the Mercer County Prosecuting Attorney's office, and numerous individual Missouri sheriffs and police departments.

Senator Ashcroft took very seriously his duty to evaluate Judge White's record. He reluctantly concluded White had a propensity to work against the imposition of the death penalty even when called for by law. As Senator Ashcroft testified,

Judges at the federal level are appointed for life. They frequently have power that literally would allow them to overrule the entire Supreme Court of the state of Missouri. If a person has been convicted in the state of Missouri, but on habeas corpus files a petition with a U.S. district court, it's within the power of that single U.S. district court judge to set aside the judgment of the entire Supreme Court of the State of Missouri. So that my seriousness with which I addressed these issues is substantial. I did characterize Judge White's record as being pro-criminal. I did not derogate his background.

Judge White argued in dissent in the Johnson case, where the defendant was convicted of killing three law enforcement officers and the wife of a sheriff, that the defendant received ineffective assistance of counsel. Congressman HULSHOF, the prosecutor in that case, rebutted that argument quite effectively. Congressman HULSHOF testified, ''The points I'd like to raise briefly about the quality of James Johnson's representation is this: He hired counsel of his own choosing. He picked from our area in mid-Missouri what we've referred to as—as I referred to as a dream team.'' And the court later ruled that the counsel was effective.

Sheriff Kenny Jones, whose wife and colleagues were killed by Johnson, testified,

Be assured that Senator Ashcroft had no other reason that I know about to oppose Judge White except that I asked him to. I opposed Judge White's nomination to the federal bench, and I asked Senator Ashcroft to join me because of Judge White's opinion on a death penalty case . . . . In his opinion, Judge White urged that Johnson be given a second chance at freedom. I cannot understand his reasoning. I know that the four people Johnson killed were not given a second chance.

Some Democrats claim that Ronnie White was treated shabbily. They say the treatment was shabby because it was embarrassing for White to be suffer defeat on the Senate floor and because of alleged misstatements by Senator Ashcroft about White's record. In response to the first point, it must be said that throughout the last Congress, Democrats constantly stressed that they wanted their nominees brought to the floor for a vote. In fact, on June 29, 1999, more than three months before the nomination came to the floor, Senator LEAHY took to the floor to say that Ronnie White ''should be allowed a vote, up or down.'' He continued: ''Senators can stand up and say they will vote for or against him, but let this man have a vote.'' Well, this is what can happen when a nominee is brought to the floor—the nomination can be defeated. If Democrats are concerned that a nominee will be embarrassed if the nominee loses, then Democrats must be careful when they clamor for a vote. I personally expressed to Judge White my regret that his nomination was considered by the full Senate in a way that ended in defeat.

A second point: when Democrats complain that there were misstatements about Ronnie White's record, why didn't they correct the record? Every senator, of course, has the right to set the record straight if there is an error. Further, on this matter there have been misstatements not by Senator Ashcroft but about Senator Ashcroft's floor statement. I want to make one point very clear: Senator Ashcroft did not accuse Ronnie White of being pro-criminal, rather he said that ''Judge White's opinions have been, and, if confirmed, his opinions on the Federal bench will continue to be pro-criminal and activist, with a slant toward criminals and defendants against prosecutors and the culture in terms of maintaining order . . .'' This statement is in no way a smear of Ronnie White. It is a reasonable conclusion after reviewing Ronnie White's dissents in a number of cases, most notably the Johnson case in which, as the lone dissenter, Ronnie White would have let a confessed murderer go free for three reasons. First, Judge White's dissent concluded that, as noted above, the defendant had ineffective assistance of counsel—yet the case was so overwhelming that Clarence Darrow could not have saved the defendant. Second, White's dissent displayed a pro-criminal bent in stating that the defendant's ''previously law-abiding life'' could warrant reducing the sentence of this quadruple murderer to life imprisonment. Third, White's dissent demonstrated a willingness to disregard the law, specifically, as the definition of legal insanity. White wrote: ''While Mr. Johnson may not, as the jury found, have met the legal definition of insanity, whatever drove Mr. Johnson to go from being a law-abiding citizen to being a multiple killer was certainly something akin to madness.'' A judge must enforce the law, not make new law by the seat of his pants.

As I stated above—and it merits repeating because Senator Ashcroft's critics have distorted his record—Senator Ashcroft supported 218 out of 230 Clinton judicial nominees. Put another way, Senator Ashcroft supported more than 94 percent of President Clinton's nominees, many of whom were women and minorities. Indeed, Senator Ashcroft supported 26 of the 27 African-American judges nominated by President Clinton and considered by the Senate. This is hardly a record of obstruction.

Like many people who watched the recent confirmation hearings of John Ashcroft for U.S. Attorney General, I too failed to recognize the man as characterized by his opponents. I've known John Ashcroft for six years in the Senate.

As I stated at the beginning of my remarks, Senator John Ashcroft is a man who knows the law. He was educated at Yale and the prestigious University of Chicago law school. While in the U.S.

Senate, he served on the Senate Judiciary Committee and chaired its Subcommittee on the Constitution. Furthermore, Senator Ashcroft is the most experienced candidate for U.S. Attorney General in American history. He served as Missouri's attorney general, its governor, and one of its U.S. senators.

During his career, Senator Ashcroft has compiled an outstanding record of protecting the rights of all people. He will continue to do so as the United States Attorney General. I strongly support his nomination and encourage all my colleagues to do so as well.

Mr. TORRICELLI. Mr. President, I have always believed that Presidents are entitled to a degree of deference in their cabinet nominees. And so, while this made it difficult I have nonetheless informed the administration that I cannot support Senator John Ashcroft's nomination to be attorney general.

Senator Ashcroft has been a dedicated public servant and I say that even though we have not found common ground on the issues. The range of issues we have disagreed on has been broad and they have centered on some of the most important laws of our land. No person should be forced to choose between their fundamental beliefs and values and enforcing our Nation's laws. For those who cherish civil rights laws, the freedom of choice and handgun control the stakes are simply too high to expect a cabinet secretary to choose between passionately held beliefs and enforcing not only the letter but the spirit of the law.

I also have specific concerns about New Jersey. It is not enough just to be opposed to racial profiling. The scars this issue has left on my state are too deep and require the strongest possible commitment if we are ever to heal. Further, it will take a concerted effort to enforce a range of civil rights laws from hate crimes to tolerance. It requires the will of the Attorney General, the full force of that office.

I said some very positive things about John Ashcroft at the time he was nominated. I continue to hope that it is possible to disagree and to disagree strongly without demonizing. I also hope he will always reflect on the concerns raised during the confirmation process.

Mr. SPECTER. Mr. President, I have sought recognition to voice my support for the nomination of John Ashcroft, of Missouri, to be U.S. Attorney General.

I think it is important to focus on the standard for a Cabinet nomination, which is fundamentally different from a judicial appointment, which is a lifetime appointment, and focus on the latitude which is customarily accorded the President of the United States in making a selection on a Cabinet nominee.

I do support former Senator Ashcroft for attorney general. And I do so, in substantial measure, because of the record he has compiled as an elected official in Missouri and because of my personal knowledge of him. He was twice elected attorney general of Missouri, he was twice elected governor of Missouri, he was elected Senator of Missouri. And Missouri is a moderate state, I think very much like my own state, Pennsylvania: two big cities, a lot of farmland. The characteristics of the electorate in Missouri, who have elected him five times to major offices, I think, speaks well of Senator Ashcroft in rejecting the notion that he is an extremist.

The John Ashcroft whom I have known for six years in the United States Senate is not an extremist. He sat a couple of seats down from me on the Judiciary Committee. Although we did not agree on many items, I always felt he was exercising his honest judgement.

He was a candidate for President, and it may be that in the course of that candidacy, expressed some views, as candidates sometimes do, which try to appeal to a constituency. But from what I have seen, on this committee and in the Senate, he is not an extremist.

He and I had a very sharp disagreement on a judicial nominee, Philadelphia Common Please Judge Massiah-Jackson. And she was, in effect, rejected by the committee, and withdrew her nomination. She was challenged as being soft on crime because of her record on sentences. At the end of a very long, difficult and contentious proceeding, including a hearing before the Judiciary Committee, as I say, she did withdraw. But at the end of the process, it was my view that John Ashcroft had expressed his own judgement about it which differed from mine. I bring in the Judge Massiah-Jackson case because of some similarities which it has to the case involving Missouri Supreme Court Justice White.

I said in the hearing that I thought that we did not accord Judge White the kind of consideration that should have been accorded, because our practices are to rely principally on staff, the ABA recommendation, the FBI investigation, without individual Senators paying as much attention to the district court nominees as we might. I intend on proposing a rule change that in the event someone is going to speak adversely about a nominee, that there be an opportunity for the nominee to respond, and the committee should focus specifically on any charges which are brought.

But I do think that, at the conclusion, Senator Ashcroft expressed his own honest views. I think it is important to note that when Judge White appeared before the committee, he did not ask that Senator Ashcroft be rejected, he raised the question as to whether Senator Ashcroft had the qualities to be an attorney general and left it up to the committee to decide.

Senator Ashcroft made a number of important commitments to the committee. We questioned him at great length on the difference between a legislator and a member of the executive branch who enforces the law. He said categorically that he would not choose to change Roe v. Wade but would be bound to enforce the law as it stood. He spoke emphatically about his commitment to enforce access to abortion clinics. And it was worth noting that, while in the Senate, on a vote on whether someone who had a judgment against them for damaging an abortion clinic and there was one case where there was an enormous judgment in excess of $100 million that the individuals' debt ought not to be dischargeable in bankruptcy, which I think is an indication as to his sentiments on that important subject.

Senator Ashcroft also made very firm commitments on recognizing the distinction between church and state and committed that, to the extent he was involved, there would be no litmus test on the selection of Supreme Court nominees.

There were challenges made to what Senator Ashcroft had done as attorney general on the segregation cases. Former Senator Danforth appeared during the nomination hearing and spoke about his evaluation of John Ashcroft being a vigorous advocate.

There was a question raised as to whether as state attorney general of Missouri Senator Ashcroft used the litigation process inappropriately. He was not held in contempt. He was not sanctioned under the federal rules, which he could have been. So on the basis of that issue and the other objections which have been raised, it seems to me that this is a nomination and a nominee where we ought to accord the traditional latitude to the President of the United States. I intend to vote for Senator Ashcroft's nomination to be Attorney General of the United States.

Mrs. BOXER. Mr. President, I would like to respond to a letter my colleague Senator SESSIONS inserted into the RECORD last evening from the editor of Southern Partisan magazine. In that letter, the editor claims that his magazine did not sell a t-shirt celebrating the assassination of President Abraham Lincoln. In my floor remarks yesterday, I stated that the magazine did in fact sell this offensive shirt, and showed my colleagues a reproduction of the actual shirt.

In particular, the editor stated that this ''tasteless item has never been advertised or sold on the pages of our magazine.'' The editor goes on to say that a part-time staff member complied a catalog of southern items, including the offensive Lincoln t-shirt, and that the brochure advertising those items were mailed ''without careful review by our editors.''

I would like to insert into the RECORD a copy of a 1995 letter from Southern Partisan, which is on the Southern Partisan magazine editor-in-chief's letterhead, which clearly indicates that the magazine did in fact sell this offensive shirt. This letter states

in relevant part: ''Due to the surprising demand for *our* anti-Lincoln T-shirt, our stock has been reduced to odd sizes. If the enclosed shirt will not suffice, we will be glad to refund your money or immediately ship you another equally militant shirt from our catalog [emphasis added].''

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

SOUTHERN PARTISAN,
Columbia, SC, December 3, 1995.

DEAR FRIEND: Due to a surprising demand for our anti-Lincoln T-shirt, our stock has been reduced to odd sizes. If the enclosed shirt will not suffice, we will be glad to refund your money or immediately ship you another equally militant shirt from our catalog.

Thank you,
SOUTHERN PARTISAN GENERAL STORE.

Mr. MCCONNELL. Mr. President, America is indeed fortunate to have a distinguished public servant of the caliber of John Ashcroft who is willing to serve his country again, this time as Attorney General of the United States. John is certainly the most qualified Attorney General nominee of this century and perhaps in the Republic's history. John has impressive academic credentials and a unique blend of legal, executive, and legislative experience. I am confident that his qualifications, combined with his keen sense of duty and unshakeable integrity, will enable Senator Ashcroft to be one of the finest Attorneys General in the nation's history and to restore luster to a tarnished agency.

John is an honors graduate of Yale University. He received his law degree from the University of Chicago, one of the country's outstanding law schools. After graduating from law school, John returned home to Missouri where he practiced law and joined the faculty of what is now Southwest Missouri State University, teaching business law for five years. Following that, our colleague, then-Missouri Governor KIT BOND, appointed John to serve the citizens of Missouri as State Auditor.

John continued his legal career as an assistant Attorney General on the staff of our former colleague, then-Missouri Attorney General John Danforth. In this capacity, John Ashcroft gained invaluable first-hand knowledge of the day-to-day operation of an Attorney General's Department. This knowledge would serve him well when he became Missouri's Attorney General in 1976. John, in fact, served two terms as Missouri's highest law enforcement officer, and as a result of his eight year tenure in that office, obtained the managerial and executive experience needed to effectively run an Attorney General's Office. Under John's leadership, the Missouri Attorney General's Office earned a reputation for strictly enforcing the law, including laws with which Attorney General Ashcroft disagreed. John Ashcroft understood well his role as Missouri's Attorney General; he was acutely aware that Missourians twice-elected him to enforce the laws, and as his confirmation hearing before the Judiciary Committee clearly showed, John assiduously did so.

Because of his success as Attorney General, Missourians elected John their Governor in 1984 and again in 1988. To illustrate the utter ridiculousness of one of the most scurrilous charges leveled at John—that of being ''racially insensitive,'' as some are euphemistically saying—it must be noted that as Governor, John repeatedly reached out to black Americans. For example, he appointed the first black woman to the Western Missouri Court of Appeals; he established the state's first and only historic site honoring a black American, composer Scott Joplin; he led the fight to save Lincoln College, founded by black soldiers; and last month Missourians celebrated the birthday of Dr. Martin Luther King, Jr. because John Ashcroft signed that proposed holiday law. John also helped enact Missouri's first hate crimes legislation. In short, if John Ashcroft is ''racially insensitive,'' he certainly has a strange way of showing it.

After completing his second term as Governor, John began a career of national public service as Missouri's junior Senator in the United States Senate. As a member of this body, John broadened his legal experience by serving on the Judiciary Committee and by chairing its Subcommittee on the Constitution. He also continued to fight for the rights of all Americans, and was dedicated to the principle of equal treatment under the law. For example, John sponsored legislation providing equal protection for victims of crime, and he convened the first hearing on racial profiling, in which he stated for the record that racial profiling is unconstitutional. And as he did as Missouri Governor, John continued to support black judicial nominees, voting for 26 of 27 African-American nominees to the federal bench.

As impressive as John's qualifications are, what may be most impressive about him is his honor and integrity. I had the opportunity to witness first-hand a test of his character in my capacity as Chairman of the National Republican Senatorial Committee and Chairman of the Committee on Rules and Administration, which would have had jurisdiction over an election contest. As we all know, John lost a heartbreakingly close reelection bid last fall under unorthodox, and some would say, unlawful circumstances. After the election, my office was flooded with phone calls and petitions urging John to challenge the election, and lawyers lined-up to offer their services. Some argued that John should bring a constitutional challenge on the ground that it was patently unconstitutional to elect a deceased person to the United States Senate. Others wanted him to bring an election contest because of improprieties in the voting itself, such as the fact that heavily-Democrat precincts remained open after hours.

Either of these challenges may very well have proved successful, and John might still be a member of this body. But at a minimum, a challenge would have put Missourians—and the entire Senate—through a divisive ordeal, and it might well have left the good people of Missouri without full representation in the United States Senate. Always the public servant, this is something that John Ashcroft would not do. As particularly painful as this loss was, John never once considered challenging the election; he would not put his fellow Missourians through what the nation had to endure in Florida for thirty-five days. Moreover, he made it abundantly clear, both in public and in private, that he did not want others to do so either. Rather than cling to power in the hope of an eventual victory, John graciously conceded the election and wished our new colleague well.

This selfless action was that of a statesman, and it reminds me of the famous words of another statesman, Henry Clay, who said: ''I had rather be right than be President.'' John Ashcroft's response to this truly unique and difficult loss in November was essentially: ''I had rather be right than be Senator.'' And it is because of principled actions such as this that John is one of the most respected former members of this body. And because Democratic members know of John's character and integrity, they speak with confidence about the outstanding job he would do as Attorney General. For example, our former colleague, Senator Moynihan, stated that John ''will be a superb Attorney General.'' And our current colleague, Senator TORRICELLI, who knew of John's skill and character from their service together on the Judiciary Committee, stated that ''While I have obvious philosophical differences with John, his ability and integrity simply can't be questioned.''

Now despite John's experience and dedication to duty, I have heard a lot of people say that he is unfit to be Attorney General because of: (1) his strong and abiding faith in God; (2) his firm belief in law and order; and (3) his commitment to the Constitution, even when that commitment is at odds with those unbiased ''legal scholars'' on the editorial board of the New York Times. Far from disqualifying him from public service, however, these qualities only reinforce my belief that he will ably serve as the nation's chief law enforcement officer. The Senate would serve the nation by confirming him as Attorney General, and I urge it to do so.

Ms. SNOWE. Mr. President, I rise to support the confirmation of President Bush's nominee for Attorney General of the United States, former Senator John Ashcroft.

After serving in this body with John Ashcroft for the last six years, I know him as a man of integrity and compassion. That is not to say we always agree—we have sparred passionately on

issues—not the least of which was abortion rights. Clearly, though, John is a well-qualified nominee, as evidenced by the fact that of the 67 persons who have served as United States Attorney General in our history, only John Ashcroft has served as state attorney general, governor, and U.S. Senator serving on the Judiciary Committee.

In fact, John Ashcroft was State Attorney General and Governor for two terms each. He was the head of the National Association of Attorneys General and head of the National Governors' Association. In these roles, John has a solid record of working with and protecting the rights of all people.

That John and I hold differing views is certainly not unusual in this body of one hundred individuals—all with strongly held beliefs, all with disparate backgrounds, and all representing different constituencies with distinct concerns and varying priorities. I respected his right to hold his beliefs, just as he has always respected my right to the beliefs that I have often expressed in this very chamber. That is the nature of our representative democracy, and certainly the nature of the Senate as the embodiment of the union of states.

Likewise, President Bush, as the duly-elected Chief Executive of the United States, is accorded the privilege of nominating those men and women he deems most fit to administer the policies and duties with which he has been entrusted by the people of this Nation.

I did not agree with all of the personal viewpoints of President Clinton's various nominees—far from it. Instead, I attempted to judge the fitness of each nominee based on their individual record, experience, testimony, and integrity. Recognizing that President Clinton's nominees would not surprisingly hold different beliefs than my own in some instances, I asked myself whether or not those beliefs would, in and of themselves, preclude the nominee from executing his or her duties to the extent that they would be unfit to serve.

That is the same question I ask myself concerning the nomination of Senator Ashcroft, keeping in mind that I do not believe that a nominee's ideological philosophy should be a determining factor in their ability to serve. As the Portland Press Herald noted in their January 17 editorial ''Senators have the power of ''advice and consent'' over such nominees, and they have the power to make judgments based on whatever criteria they choose. Still, failing to pass an ideological litmus test is not a sufficient reason to decline to nominate someone to an appointive post, barring hard evidence of unsuitability or criminal misconduct. . .''

And what about the power of ''advice and consent'' given to the Senate under Article II, Section 2 of the Constitution? Alexander Hamilton in summing up this power noted ''To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.''

And if you review history you will find that this ''check'' as it were has been used judiciously. The fact is that since 1789—212 years—only 19 cabinet nominees have failed to be confirmed. Clearly the Senate must have differed with the President on his nominees more than 19 times over the past 212 years, yet with very few exceptions has deferred to the President, who will ultimately be held responsible for his choice.

In short, our use of the ''advice and consent'' power must achieve a careful balance between our responsibility to check presidential abuse at one end of the scale, and a respect for the president's constitutional prerogative on the other. It is a question of degrees and a matter of judgement left to us to weigh with due diligence and care.

In the case of John Ashcroft's nomination to be Attorney General, I would argue that John Ashcroft deserves to be taken at his word with regard to what he has said at his confirmation hearings. He has said, clearly and unequivocally, that he will uphold the laws of the United States of America.

During the confirmation hearings, John Ashcroft was characteristically straightforward when he said, ''I understand that being attorney general means enforcing the laws as they are written, not enforcing my personal preferences. It means advancing the national interest, not advocating my personal interest.''

During a private meeting in my office, John echoed that pledge and personally assured me that he would carry out this and other laws on behalf of every American. That includes Roe v. Wade. That includes ensuring access to abortion clinics. And I take John Ashcroft at his word.

He also stated during the hearings that, ''The attorney general must recognize this: The language of justice is not the reality of justice for all Americans . . . No American should have the door to employment or educational opportunity slammed shut because of gender or race. No American should fear being threatened or coerced in seeking constitutionally protected health services.'' I commend him for this sentiment and, again, I take John Ashcroft at his word.

Importantly, John has carried himself with distinction in carrying out the laws in other elected positions, notably during his terms as governor and Attorney General of Missouri. As he told the Judiciary Committee, ''I take pride in my record of having vigorously enforced the civil rights laws as attorney general and governor,'' and I take John Ashcroft at his word.

Moreover, not only John's words but his deeds support his strong commitment to civil rights. As Governor, John signed Missouri's first hate crimes statute and legislation creating the Martin Luther King Holiday. He established Missouri's first and only historic site honoring an African-American, and led the fight to save an independent Lincoln University, founded by African-American soldiers. Last year, he convened the only Senate hearing on the subject of racial profiling, and opened the hearing by unequivocally condemning racial profiling, calling it ''an unconstitutional practice.''

As Missouri Attorney General, John Ashcroft enforced laws that differed from his own beliefs in a number of areas, including abortion and, more specifically, the confidentiality of hospital records on the number of abortions performed; and church and state issues, such as the availability of funds for private and religious schools and the distribution of religious materials in public schools.

As Governor, John was presented on nine occasions with three-candidate panels for judicial appointments that contained one or more minority candidates. As he told the Committee in his nomination hearing, ''I took special care to expand racial and gender diversity in Missouri's courts,'' and the facts bear that out.

In every instance, he either appointed a minority to the post or appointed the minority candidates on the panel to judicial positions at a later date. He appointed more African-American judges to the bench than any governor in Missouri history.

He appointed the first African-American on the Western District Court of Appeals. He appointed the first African-American woman to the St. Louis County Circuit Court.

He appointed the first two women to the Missouri Courts of Appeals. And he appointed the first woman to the Missouri Supreme Court—the only woman ever to have been appointed to that court.

Similarly, in the Senate, John supported every single African American judicial nominee confirmed by the Senate—26 separate nominations in all. But despite this overwhelming record of supporting minority judicial candidates, he has been attacked for opposing the nomination of one African American Judge, Ronnie White—a nominee who was opposed by 54 members of the Senate, including me.

Judge White's nomination was rejected by the Senate not because of his race, but because of his opinions in some death penalty cases. It bears noting that not only was Judge White vigorously opposed by the National Sheriffs' Association, the Missouri Federation of Police Chiefs, and numerous other Missouri and national law enforcement groups, but he also stood as

the lone dissenter in a death penalty case involving the brutal slaying of three law enforcement officers in Missouri and the wife of a sheriff who was killed after she was shot five times, in the family's own home, as she was holding a church function.

It is critical to note that in 1998, using similar criteria, I opposed the nomination of Judge Ann Aiken to the federal bench because of her decision to give probation instead of jail time to a man who raped a five-year-old child.

And what has Judge White said about John Ashcroft's motivations? He has said, and I quote, ''. . . let me say, I don't think Senator Ashcroft is a racist, and I wouldn't attempt to comment on what's in his mind or what's in his heart.''

Finally, I want to emphasize that there were a number of critical policy areas on which Senator Ashcroft and I did agree during our tenure together in the Senate. They deserve mention considering the criticism that has been leveled against this nominee, and the relevance of the issues to the post of Attorney General.

John co-sponsored the benchmark Violence Against Women Act, and helped author the provisions to prevent Internet stalking included in the legislation. He supported minimum hospital stays for women who give birth, and a measure to permit breast and cervical cancer coverage by Medicaid for low-income women.

He supported a provision urging that the ''Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack,'' and voted to make civil judgments for those who commit violent acts at abortion clinics non-dischargeable in bankruptcy—an amendment that I cosponsored.

This is the John Ashcroft I know—a man of ability, remarkable experience in public service, proven integrity, and unimpeachable professionalism. As Attorney General, he will be charged not with writing new laws—as he ably did as a Senator—or interpreting laws—as a judge would do. Instead, he will be given responsibility as our nation's top law enforcement official for executing the laws of the United States on behalf of President Bush and the American people. I am confident he will enforce the laws to protect all Americans equally, regardless of his personal views, and I will vote to confirm John Ashcroft as Attorney General of the United States.

Mr. FEINGOLD. Mr. President, as my colleagues know, I shall vote to confirm Senator Ashcroft. I discussed the reasons for my doing so in my statement before the Judiciary Committee. At that meeting, I said:

My colleagues, when we vote today, I'm going to do what I sincerely believe to be the right thing to do: vote for confirmation of John Ashcroft as Attorney General of the United States. For many of my colleagues, friends, supporters, and constituents, this is not easy to understand. And some see it as terribly wrong. After all, my voting record and that of John Ashcroft could hardly be more different, and there is no question that the opposition has raised significant and serious concerns about the appropriateness of this nomination.

Let me begin by noting a few positive aspects of former Senator John Ashcroft's positions and responses to questions at his hearing on two issues I care deeply about.

On racial profiling, as I said at the outset of the hearing on Sen. Ashcroft's nomination, during the last Congress I found him more receptive to my concerns about the issue than virtually anyone on the Republican side of the aisle. He and his staff not only permitted but assisted in a significant and powerful hearing on racial profiling in the Constitution Subcommittee. Although he did not ultimately cosponsor our traffic stop statistics bill, he made constructive suggestions about the bill, and his interest in addressing this terrible problem I believe was sincere.

And that sincerity was underlined in recent testimony before this Committee. He stated that he believes racial profiling is an unconstitutional practice and that he will make it a priority of the civil rights division of the Department to eradicate it. I believe him and I look forward to working with him on this if he is confirmed.

I have also expressed great concern that whoever assumes the role of Attorney General of the United States needs to understand and appreciate a need for fairness in the administration of the severest punishment our Federal government can mete out, the death penalty. I understand that both President Bush and Senator Ashcroft support the use of capital punishment. But I was relatively pleased with Senator Ashcroft's responses to my questions, both at the hearing and in written form, concerning the federal death penalty system. I was particularly pleased to hear his commitment to continuing the Justice Department review of racial and regional disparities in the federal system, a review that was ordered by President Clinton and is only in its initial stages. I plan to hold him to his pledge and urge him carefully to consider the results of this review and address the disparities before proceeding with any federal executions.

Having noted at least those areas where I'm hopeful about working together with John Ashcroft, this process has, nevertheless, brought forth extremely serious information that could lead any reasonable person to conclude that this nomination should not go forward.

The interview with Southern Partisan and his acceptance of an honorary degree at Bob Jones University raise significant questions about his sensitivity to the concerns of the African American community in this country. Even worse, his failure to fully disavow these actions is troubling. It seemed almost as if he was playing it safe, trying not to antagonize certain conservative constituencies rather than admitting his mistakes and recognizing the need to take concrete steps to disavow the racist attitudes that both of those institutions represent to many Americans. He will need to do much more if he is confirmed to reassure African-Americans that he will faithfully enforce and apply the civil rights laws of this country.

On another issue, Senator Ashcroft and the Republican majority's treatment of Judge Ronnie White was just plain unfair, and that is why I joined Senator Durbin in apologizing to him when he appeared before the Committee. Senator Ashcroft led opposition to Judge White, misleading our colleagues as to his record and attacking him in harsh and unfair language without giving him an opportunity to respond. There was no excuse for this behavior, and it represents for me an extremely sorry chapter in Senator Ashcroft's public record. Our Republican colleagues on this Committee and in the Senate share the responsibility for what happened. They should not have followed their colleague and allowed this to become a partisan issue on the floor of the Senate.

I agree with David Broder, who in a column in which he stated a number of reasons for supporting John Ashcroft for Attorney General said that in the end, the Ronnie White episode could alone justify voting against him. He said that Ronnie White deserves more than an apology, he deserves an appointment to the federal bench. I agree and I hope that Senator Ashcroft and President Bush will give this idea serious consideration.

And they need to go farther. The White nomination debacle raised the issue of race on the Senate floor in an unprecedented and almost tragic manner. The President and his advisors need to take major steps to right that wrong, and they can start by urging the Senate promptly to approve the nomination of Judge Roger Gregory to the Fourth Circuit Court of Appeals. I would note that Judge Gregory has received the endorsement of his home state Senators, Senators Warner and Allen, both of whom come from the President's party.

Another troubling area is Senator Ashcroft's handling of a St. Louis desegregation case during his time as Attorney General of Missouri. I was impressed with the strong testimony of respected civil rights lawyer Bill Taylor. Mr. Taylor's testimony and the entire record of this case make it clear that at best Senator Ashcroft did not ''get'' the role of the courts in the case and the urgency of resolving the issue in the best interests of the children in the city. At worst, he exploited the case for political purposes, which is very troubling indeed.

Then there is the case of James Hormel, our current ambassador to Luxembourg, whom Senator Ashcroft strongly opposed when his nomination was under consideration by the Senate. This was an extreme example of a pattern of unwarranted opposition to nominees pursued by Senator Ashcroft. I am frankly mystified by the notion that in the 21st century a nomination of a distinguished American would be blocked because of his sexual orientation. This is another sorry chapter in Senator Ashcroft's record, and frankly, his responses to written questions from members of this Committee about his position on this nomination were unsatisfactory and raise even more questions about his testimony than they answer. Ambassador Hormel is right to be outraged by those answers and the insinuations they contain.

On a related topic, we have the accusations by former Wisconsin state Senator Paul Offner that Sen. Ashcroft questioned him about his sexual orientation in a job interview in 1985. I have worked with both of these people, and based on information I've seen, I find it hard to disbelieve either one. But the Offner account does bother me and while I will vote for Senator Ashcroft in committee today, I reserve the right to review any further information in this area that may come forward prior to the final confirmation vote on the floor. After all, Senator Ashcroft in sworn testimony told me that he had never used such an approach in hiring.

In the end, however, this record has to be put in the context of the standard that I believe should be used when voting on the confirmation of a cabinet position. And, by the way, I do find somewhat persuasive the argument that the position of Attorney General

is particularly significant, although it does not rise to the level of a high lifetime judicial appointment.

As a matter of practice, the Senate has, for the most part, avoided rejecting the President's Cabinet nominations because of their ideology alone. The Senate may examine, and has examined, whether the extremity of nominees' views might prevent them from carrying out the duties of the office they seek to occupy. But the Senate has nearly uniformly sought to avoid disapproving nominations because of their philosophy alone. I believe that we should not begin to do so now.

As my colleagues know, in the practices and precedents of the Senate, the Senate considers and approves the overwhelming majority of nominations as a matter of routine. Over the history of the Senate, the Senate has considered and approved literally millions of nominations.

The Senate's voting to reject a nominee has been an exceedingly rare event. Of the 1.7 million nominees received by the Senate in the last 30 years, the Senate has voted to reject just 4, or one in every 425,000. Of course, Presidents often withdraw without a vote the nominations of those who likely face defeat.

The Senate's voting to reject a nominee to the Cabinet has been an exceedingly rare event. Over the entire history of the Senate, the Senate has voted to reject only 9 nominations to the President's Cabinet. The Senate rejected six in the 19th Century, and three in the 20th Century.

Four of the nine Cabinet nominees rejected were during the Presidency of President Tyler alone. Several other rejections may be said to have flowed from larger battles between the Senate and the President, as when the Senate rejected President Jackson's nominee to be Secretary of the Treasury in the wake of the dispute over the Bank of the United States. Similarly, bad feelings after the impeachment of President Andrew Johnson led to the Senate's rejection of President Johnson nominations of his counsel in the impeachment trial to be Attorney General.

In the 20th Century, the Senate rejected half as many Cabinet nominees as it did in the 19th Century. In the wake of the Teapot Dome scandal, the Senate voted down President Coolidge's nomination of Charles Warren because of his ties to trusts. Most recently in 1989, the Senate rejected the nomination of Senator John Tower, an event which many on this Committee will recall from their own memory.

This examination of the history demonstrates that it has been a nearly continuous custom of the Senate to confirm a President's nominees to the Cabinet in all but the very rarest of circumstances. These practices and precedents thus support the principle that the Senate owes the President substantial deference in the selection of the Cabinet.

I should also note, as some members of the committee have done that all of President Clinton's cabinet appointments were confirmed overwhelmingly, and usually unanimously, despite the fact that many Republicans strongly disagreed with their views. This included the view of Attorney General Janet Reno in opposition to the death penalty, a view I strongly share with her but which has enlisted the support of few of my colleagues.

Now, a number of opponents of this nomination for whom I have very high regard have sought to go beyond the traditional standards for cabinet nominations. I think the most interesting approach that the opponents have laid out, especially in light of the serious problems with Senator Ashcroft's record that I have already identified, is the question of whether Senator Ashcroft will actually enforce the law. I think my colleague Senator Schumer set up the question well when he said words to this effect: ''Given Senator Ashcroft's entire record of passionate advocacy for very conservative causes: Can he switch it off?'' I think this is a useful standard but it must be applied with caution. All of us have observed many talented people taking very different roles in their careers, sometimes having to oppose either people or groups for whom they used to advocate.

Now in my own career, I've certainly been called unreasonable, unyielding and too persistent on occasion. But I remember being a defense attorney for large corporations at a law firm and then subsequently when I went to the Wisconsin State Senate, voting against those interests every time. I went into the State Senate representing a largely rural district and I remember constantly speaking of the need for rural property tax relief and not letting the City of Milwaukee run off with the entire budget. Yet, when I became a United States Senator, I understood my role to have changed and that I needed to advocate zealously for the very real needs for the people of our largest city.

So, it seems to me that I've been asked to switch it off on several occasions. I feel I have done so and that this is fairly common in the careers of those public men and women.

I think we were all struck by the strength of John Ashcroft's commitments and answers to our tough questions which were given under oath. His specific commitments to enforce the law in several areas were certainly not tepid. This was especially true with regard to his responses on choice and abortion-related matters—an area where, as a policy and constitutional matter I disagree with him virtually completely. Given Senator Ashcroft's strident record in this area it is completely understandable to me that critics would regard this as a ''confirmation conversion'' and that some would even see this as cynical with carefully chosen words with regard to Roe v. Wade, leaving the door open for a very different reality in the new Attorney General's office. I, for one, will not stand by and allow a departure from the clear impression that Senator Ashcroft offered as an assurance. In fact, one area I will closely scrutinize is his choices for top level positions in the Department of Justice. He will have direct responsibility for carrying out the promises he made to this Committee and the country.

But I do take some umbrage at the notion that giving John Ashcroft's sworn testimony the benefit of the doubt is somehow because of Senate collegiality. No, it is because it is sworn testimony.

But I do understand the very strong skepticism on this point in light of the incidents I've already reviewed especially as they relate to the blocking of nominations, a process in which John Ashcroft too often participated. I cannot question anyone for opposing this nomination, anyone for coming to an opposite conclusion of this record. It simply depends on one's view of the cabinet nomination process. It is a judgement call. I feel obligated under the traditional understanding of how cabinet appointments are handled to not put the worst possible interpretation on these facts. And I specifically cannot justify constructing the worst case scenario solely because Senator Ashcroft seemed to do the same for a number of very worthy nominees. It is certainly tempting to do so, but I am afraid it looks too much like political ''payback,'' a lesson that would not be lost in future cabinet confirmation considerations, including those involving the choices of a Democratic President. I don't want to be a part of taking the United States Senate and this country further down the road that John Ashcroft and others in his party paved during the Clinton years.

Having said that, I want to hasten to add that I'm not at all sure that this kind of deference be given anymore on lifetime federal judicial appointments given what appears to be an open assault in recent years by the U.S. Senate on the federal judiciary. As I said in my opening statement at the confirmation hearing, although Democrats are being asked to follow the political golden rule on this nomination, I certainly agree that the line must be drawn at some point concerning the politicization of appointments. My judgment is that this is not the place—not this nomination or this office, as terribly important as it is.

And yes, I firmly believe that as a progressive, this is about our future credibility and ability to move our agenda in a future administration that better reflects on voting records and beliefs, which in most cases are just the opposite of a John Ashcroft's.

I know that some see this as futile or naive in light of the unbending ''other side.'' They may be right. But I believe the American people desperately want us to conduct ourselves, where possible, in a bipartisan manner: with civility, with give and take, and act as if those terms have real meaning and are not just empty rhetoric.

So when I vote for John Ashcroft in committee, I am reaching out to the new Administration and to my Republican colleagues and especially those on the opposite side of this committee. I believe we share mutual respect. So I am extending to you at the beginning of this new Republican Administration an olive branch, but it is not a white flag I assure you. This is about the Department of Justice and it is justice I want to see for the wrong done to Judge Ronnie White. And it is justice I want to see done in the 4th Circuit Court of Appeals where the largest African American population lives and has never had an African American judge until the recess appointment of Roger Gregory. It is justice I want for numerous other circuit court nominees who languished in this committee for years and never even received a hearing. And it is justice I want for the future James Hormels and Bill Lann Lees who were most assuredly treated unfairly. And it is justice I want for the the victims of racial profiling in America. And I will press this Administration, the Attorney General, and this committee to prevent it from happening to others in the future.

So I am genuinely appealing to you to show in concrete ways in the near future that you are concerned about the obviously heartfelt and legitimate feelings of many Americans that the Senate's role in the nominations process has been abused and overly politicized. There are real fault lines emerging in our culture and in our political system and repairs must be made. And some who have been harmed can and must be made whole.

In fact, one of the most eloquent statements to this effect came just this month in President George W. Bush's Inaugural Address: ''Sometimes our differences run so deep it seems we share a continent, but not a country.'' I think he's right and I think this committee is the place to begin to repair the breach. That means for me the very difficult decision to vote to confirm John Ashcroft, but it also means immediate concrete efforts by the President and his party to mend the wounds that led to such fierce opposition to the Ashcroft nomination. It, of course, also means that the new Attorney General must vigorously enforce the law and be the Attorney General of all the people, regardless of race, religion, gender or sexual

orientation. If he does that, he will earn the support of the American people. If he does not, I will be the first to call him on it and demand that he be held accountable.

That was my statement in the Judiciary Committee.

I rise today to speak more generally on the Senate's role of advice and consent in the President's nomination of individuals to the Cabinet. I rise also to speak a bit about the appointment process in general, apart from the discussion of any particular nomination. This analysis governs my consideration of both Senator Ashcroft's and Ms. Norton's nominations.

John Adams wrote that we seek ''[a] government of laws, and not of men.'' He and other Founders sought a government based on principles, not on personalities. If we, as Senators, wish to serve that end in the nomination process, we must measure Cabinet nominations according to principle, with a look at the past and a view to the future.

The first principle that I think should govern Cabinet nominations is what one might call the political Golden Rule. We, as Democrats, should, if at all possible, do unto the Republicans as we would have the Republicans do unto us. A Democratic President ought to be able to appoint to the Cabinet principled people of strong progressive ideology. And a Republican President ought to be able to appoint to the Cabinet principled people of strong conservative ideology.

Now, some of our Republican colleagues have certainly failed too often in recent years to follow that Golden Rule, and I understand the desire to repay them in kind. To some degree, I share that desire. But I am determined to resist it for the good of the country, the health of the nomination process, and ultimately, to advance the prospects of future nominees who share the unabashedly progressive convictions that I hold dear.

This principle means that, except in the rarest of cases, voting records and conservative ideology alone should not be a sufficient basis to reject at least a Cabinet nominee. I say this as a progressive Democrat from Wisconsin who hopes that future Presidents may appoint the William O. Douglasses and Ramsey Clarks of their times, and that future Senates will not reject them for Cabinet positions on the basis of their ideology alone.

It should not be a requirement for a Cabinet position that the nominee travel solely in the middle of the road. There will come great leaders on the left and on the right.

If we seek the great minds of our times, they may on occasion blow hot or cold. We should not require all the leaders of our country to run a tepid lukewarm.

Now, whether nominating a staunch conservative is good politics or, more importantly, whether it is wise, in light of a promise to unify the nation after a very close election, is an important issue for a sustained national debate. But that question is not at the core of our responsibility in this body to advise and consent on Cabinet nominations.

Alexander Hamilton wrote of the dangers of partisanship in the nomination process in Federalist number 76. He cited the partisanship of legislatures as one of the reasons why the Constitution did well to vest the power to nominate in the President, rather than in the Congress. Considering what would happen if the Constitution had given the Congress the power to nominate, Hamilton wrote:

> The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: ''Give us the man we wish for this office, and you shall have the one you wish for that.'' This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.

So Hamilton wrote in Federalist 76. Thus we honor Hamilton's cautionary warning, and we advance the public service, by avoiding partisanship in the confirmation process.

As a matter of practice, the Senate has, for the most part, limited its consideration of the President's Cabinet nominees to an inquiry into the nominees' fitness for office. The Senate must examine, and has examined, the qualifications of nominees. William Blackstone wrote in his Commentaries on the Laws of England, a work well known among the Founders, that ''[a]ll offices . . . carry in the eye of the law an honour along with them; because they imply a superiority of . . . abilities, being supposed to be always filled with those that are most able to execute them.'' The Senate has thus nearly uniformly sought to test the ability of nominees to execute the office that they seek to occupy.

But as a matter of practice, the Senate has, for the most part, avoided rejecting the President's Cabinet nominations because of their ideology alone. The Senate may examine, and has examined, whether the extremity of nominees' views might prevent them from carrying out the duties of the office they seek to occupy. But the Senate has nearly uniformly sought to avoid disapproving nominations because of their philosophy alone. I believe that we should not begin to do so now.

Mr. President, the second principle that I think should govern nominations is that the Senate owes the President substantial deference in the selection of the Cabinet. The Constitution vests the appointment power primarily in the President. This choice of the Founders, in turn, flows from the Constitution's imposing on the President the duty faithfully to execute the laws of our Nation.

Article 2, section 1 of the Constitution begins: ''The executive power shall be vested in a President of the United States of America.'' That section ends by requiring the President-elect to take the oath ''that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.'' And article 2, section 3 provides that the President ''shall take care that the laws be faithfully executed.''

To carry out that duty, the President needs policy-makers in the executive branch, particularly in the Cabinet and subcabinet, who will support the President's program, as well as carry out the law. The Supreme Court in Myers v. United States explained:

> Our conclusion . . . is that Article II grants to the President the executive power of the Government, i.e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers—a conclusion confirmed by his obligation to take care that the laws be faithfully executed; . . . and . . . that to hold otherwise would make it impossible for the President, in case of political or other differences with the Senate or Congress, to take care that the laws be faithfully executed.

Thus article 2, section 2 of the Constitution confers the appointment power in the following language:

> The President . . . shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Let me begin my discussion of this language with an analysis of its history.

With this language, the Constitutional Convention made a change from the Articles of Confederation. Article 9 of the Articles of Confederation vested appointment powers in the Congress or a committee of Congress. That article provides, in relevant part:

> The United States in Congress assembled, shall have the sole and exclusive right and power of . . . appointing courts for the trial of piracies and felonies committed on the high seas. . . .
>
> The United States in Congress assembled shall also have the sole and exclusive right and power of . . . appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States. . . .
>
> The United States in Congress assembled shall have authority . . . to appoint such other . . . civil officers as may be necessary for managing the general affairs of the United States under their direction. . . .

And finally:

The United States in Congress assembled shall never . . . appoint a commander in chief of the army or navy, unless nine States assent to the same. . . .

Recall that one of the prime reasons for the Constitutional Convention that wrote our current Constitution was that the Articles of Confederation provided a government that proved less than workable. The Founders thus sought consciously to depart from this legislative government in favor of a stronger executive.

When the Constitutional Convention began to debate the Constitution, its working draft initially provided for the Congress to choose the national judiciary. Many of the Framers found fault with this proposal. Pennsylvania's James Wilson argued that appointment by a group with numerous members would necessarily lead to ''[i]ntrigue, partiality, and concealment.'' He argued: ''A principal reason for unity in the Executive was that officers might be appointed by a single, responsible person.''

Virginia's James Madison agreed, saying, ''Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The Legislative talents . . . were very different from those of a Judge. . . .''

Massachusetts's Nathaniel Gorham, who in the Convention was an early proponent of the structure finally adopted in the Constitution, also emphasized the value of focusing responsibility on the President. Madison's notes report him saying:

The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. . . . [N]ot . . . that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

Pennsylvania's Gouverneur Morris argued that the President would need to deal with every part of the United States, and would thus be best informed about the character of potential nominees. Madison's notes report:

Mr. Gouverneur Morris argued against the appointment of officers by the Senate. He considered the body as too numerous for the purpose; as subject to cabal; and as devoid of responsibility.—If Judges are to be tried by the Senate . . . it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Gouverneur Morris later summed up: ''[A]s the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security.''

When they reported home to their Governor, Connecticut's Roger Sherman and Oliver Ellsworth cited the protection of the rights of smaller states, writing: ''The equal representation of the States in the Senate and the voice of that branch in the appointment to offices will secure the rights of the lesser as well as of the greater States.'' The Supreme Court in Myers v. United States cited this as a major purpose for the creation of the Senate's power of advice and consent, saying:

The history of the clause by which the Senate was given a check upon the President's power of appointment makes it clear that it was not prompted by any desire to limit removals. . . . [T]he important purpose of those who brought about the restriction was to lodge in the Senate, where the small States had equal representation with the larger States, power to prevent the President from making too many appointments from the larger States.

After the Convention settled on the language now in the Constitution, proponents and opponents of executive power alike agreed that the President received the paramount role.

New York's Alexander Hamilton, who wanted a strong Presidency, wrote in Federalist number 76:

[I]t is easy to show, that every advantage to be expected . . . would, in substance, be derived from the power of nomination . . . . In the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man who, with the approbation of the Senate, should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing.

Similarly, Maryland's Luther Martin, who feared too strong a Presidency, wrote in the Genuine Information:

To that part of this article . . . which gives the President a right to nominate, and with the consent of the Senate to appoint all the officers, civil and military, of the United States, there were considerable opposition—it was said that the person who nominates, will always in reality appoint . . . .

In the ratification debates, insofar as they addressed the nomination process, Hamilton's two Federalist Papers, numbers 76 and 77, stand most prominently. In Federalist number 76, Hamilton picked up the theme of the value of focusing responsibility on the President, writing:

The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body.

Hamilton also wrote of responsibility in Federalist number 77, where he wrote:

The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace.

In the discussion among the Founders that touches most closely on the Senate's role in the nomination process, Hamilton wrote that he expected the Senate to reject nominees rather infrequently, but that the potential of such rejections would provide a useful check. Hamilton wrote:

But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

Hamilton concluded:

To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

The first Congress, which included among its Members several of the Founders, had occasion to discuss the appointment power. Georgia's Abraham Baldwin, for one, had been a delegate to the Constitutional Convention, and then became a Congressman. In arguing against extending the Senate's advice and consent power to removals from office, he said:

I am well authorized to say that the mingling of the powers of the President and Senate was strongly opposed in the Convention which had the honor to submit to the consideration of the United States and the different States the present system for the government of the Union. Some gentlemen opposed it to the last, and finally it was the principal ground on which they refused to give it their signature and assent. One gentleman called it a monstrous and unnatural connection and did not hesitate to affirm it would bring on convulsions in the government. This objection was not confined to the walls of the Convention; it has been subject of newspaper declamation and perhaps justly so. Ought we not, therefore, to be careful not to extend this unchaste connection any further?

Similarly, James Madison became a Congressman in the first Congress, where he said:

Perhaps there was no argument urged with more success or more plausibly grounded against the Constitution under which we are now deliberating than that founded on the mingling of the executive and legislative branches of the Government in one body. It has been objected that the Senate have too much of the executive power even, by having control over the President in the appointment to office. Now shall we extend this connexion between the legislative and executive departments which will strengthen the

objection and diminish the responsibility we have in the head of the Executive?

The Supreme Court in Myers v. United States concluded from this history that it should read narrowly the Senate's power of advice and consent, saying: ''Our conclusion . . . is . . . that the provisions of the second section of Article II, which blend action by the legislative branch, or by part of it, in the work of the executive, are limitations to be strictly construed and not to be extended by implication . . . .''

Let me turn now briefly to the history of the process of advice and consent in the Senate. Many of my Colleagues will have read the excellent discussion of that history in volume 2, chapter 2, of Senator BYRD's history of the Senate. For those who have not, I recommend it.

As my Colleagues know, in the practices and precedents of the Senate, the Senate considers and approves the overwhelming majority of nominations as a matter of routine. Over the history of the Senate, the Senate has considered and approved literally millions of nominations.

The Senate Executive Journal began totaling the number of nominations received and confirmed beginning in 1929. From then until now, the Senate has received more than 2.9 million nominations and confirmed more than 2.8 million. Over that period, the Senate has confirmed 97.9 percent of the nominations that it received. Among those not confirmed, many simply remained unconfirmed at the end of a Congress.

The Senate's voting to reject a nominee has been an exceedingly rare event. Of the 1.7 million nominees received by the Senate in the last 30 years, the Senate has voted to reject just 4, or one in every 425,000. Of course, Presidents often withdraw without a vote the nominations of those who likely face defeat.

The Senate's voting to reject a nominee to the Cabinet has been an even more exceedingly rare event. Over the entire history of the Senate, the Senate has voted to reject only 9 nominations to the President's Cabinet. The Senate rejected 6 in the 19th Century, and 3 in the 20th Century.

Four of the 9 Cabinet nominees rejected were during the Presidency of President Tyler alone. Several other rejections may be said to have flowed from larger battles between the Senate and the President, as when the Senate rejected President Jackson's nominee to be Secretary of the Treasury in the wake of the dispute over the Bank of the United States. Similarly, bad feelings after the impeachment of President Andrew Johnson led to the Senate's rejection of President Johnson's nomination of his counsel in the impeachment trial to be Attorney General.

In the 20th Century, the Senate rejected half as many Cabinet nominees as it did in the 19th Century. In the wake of the Teapot Dome scandal, the Senate voted down President Coolidge's nomination of Charles Warren because of his ties to trusts. The Senate voted down President Eisenhower's nomination of Lewis Strauss, some say because of Admiral Strauss's lack of tack. Most recently, in 1989, the Senate rejected the nomination of Senator John Tower, an event which many in the Senate will recall from their own memory.

This examination of the history demonstrates that it has been a nearly continuous custom of the Senate to confirm a President's nominees to the Cabinet in all but the very rarest of circumstances. These practices and precedents thus support the principle that the Senate owes the President substantial deference in the selection of the Cabinet.

Bearing in mind this history and Hamilton's admonition that the Senate's ''dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate,'' what then should be, in Hamilton's words, the ''special and strong reasons for the refusal'' that should prompt the Senate to reject a nominee to the Cabinet?

It is in the nature of the Constitution's grant of powers to the Senate that each Senator must make his or her own decision how to vote on nominees whom the Senate considers. It thus follows that each decision must to some extent be subjective. But we do injury to the reputation of the Senate when we cannot articulate our reasons for rejecting a nominee as the expression of rules that could have universal application.

It is the nature of justice that different persons of similar circumstances should receive similar treatment. Let us do justice when the Senate exercises its role of advice and consent.

Let us examine nominees to see that they have, in Blackstone's words, ''superiority of . . . abilities''; let us see that they are ''most able to execute'' the offices for which they are nominated.

Let us thoroughly investigate nominees' competence and experience. Let us question whether they have taken actions that would lead us to doubt their ability fully and fairly to execute their offices.

Let us explore nominees' integrity and ensure that they have the proper ethical bearing to administer the high trusts to which they are nominated.

And yes, let us guard against approving the nomination of an individual who stands so far at variance with the core values of this Nation—values of freedom, democracy, and equality—that we cannot realistically imagine the nominee's being able to carry out the duties of an office in our American government. That will necessarily be a subjective judgment, but plainly a legitimate one.

But let us conduct our investigation in matters such as these that involve the lives and reputations of other people—people almost uniformly highly regarded in the community—with civility. Let us take pains to avoid casting the kind of personal ''stigma'' that Hamilton feared. And let us, when we hold the honor and careers of people in our hands, do what we can to diffuse the bitter viciousness that has seized so much of official Washington.

I propose that we govern ourselves by principle, as a Democrat at the outset of a new Republican Presidency, in the hope that we may rise above that which has come before. For I cannot help but express my objection to the attitude and approach that the Republican majority in the Senate took toward the nominees of the Democratic President since the Republicans took control of the majority in 1994.

In some respects, the Republican majority seemed not even to accept the legitimacy of President Clinton's electoral victories in 1992 and 1996. Elections must have consequences.

Instead, it appeared to me that they unfairly blocked very legitimate, qualified appointees such as Bill Lann Lee, Ronnie White, and James Hormel.

I think this was wrong. But I propose that we Democrats not return the favor, escalating a never-ending harshening of our discourse. Rather, I propose that we treat this new Republican President the way that we would want a Republican majority to treat a Democratic President in the future.

It is not easy for me to tell those who fought so hard for President Clinton and then for Vice-President Gore that we should follow the Golden Rule, and that we should treat President Bush better than the Republican majority treated President Clinton. And should the new President abuse the Senate's deference, there may come a point when we have to draw a line and say, ''No more,'' given the Republican majority's refusal to accord a Democratic President the very deference that Republicans now seek.

I want to make clear the manner in which I have evaluated both of the controversial nominees before this body, the nominee we consider today, former Senator Ashcroft, and the nominee who was confirmed Tuesday, Ms. Norton. I am no more comfortable with these votes and appointments than anyone else of my personal ideological viewpoint.

I fully understand and have heard the pain expressed by my constituents who have strongly criticized these nominations and who devote their time and thought to building broader public support for an end to all forms of discrimination or for reproductive rights or for an environmentally sound energy policy or for wildlands protection. I must work hard every day on issues affecting the public interest and public welfare, and, in order to move a progressive agenda forward I must sit and listen and talk with those who deeply and profoundly disagree with me. These nominees and I do not agree on a number of issues. But the question that this

body faces, and that I face as a member of it, is broader than whether or not we are having a referendum on the ideological views expressed by these nominees.

I have reflected and given thought to the deeper historical and philosophical roots of the process of the Senate giving ''advice and consent'' to Cabinet nominees. In this history of the Senate's treatment of Cabinet nominations, deference is an important principle. Lack of that deference on nominees can result in a confirmation process that is undignified for the country, unlikely to produce outstanding public servants, and unable to advance the debate on matters of public policy.

I am attempting by these votes to assist in restoring the Senate's credibility and trust, and I will use the powers of my office to make certain these nominees live up to the views they have expressed to this body under oath.

And let me underscore that I have risen today to address nominations to the Cabinet, who will serve for a term of years, and whom we should consider under a far looser standard than that we should apply to judges and certainly justices, who will serve for life.

But I fear that in the process of giving its advice and consent with regard to nominations to the President's Cabinet, the Senate is positioning itself to head down a road to a dangerous place. Let us decide not to go down that road.

Let us not go down the road to where those who seek public office must all their life avoid any forceful public utterance.

Let us not go down the road to where young people—college students and graduate students—will fear to experiment with new ideas.

Let us not go down the road to where expression is squelched and thoughts are stifled.

Let us not go down the road to that arid place where public discourse is barren because no public leaders dare write articles declaring their views.

Let us not go down the road to where Senators fear to take a position, make a statement, or cosponsor a bill on a controversial issue, like the death penalty—one way or the other—just to avoid a confirmation fight.

Let us not go down the road to that frozen place where the Senate's nomination process imposes a deep chill over political discourse among all who would someday hold office.

And let us not go down a road to where in order to serve our Country, one must become like milk toast, like Pablum.

Rather, let us work together in this government, working with vigorous minds who may sometimes have vigorous opinions.

The American People expect this Senate and this government, divided as it is, to govern. We owe them no less than to try to do so.

Now is not too soon to start. I extend to President Bush the hand of cooperation as he begins his administration. I will cast my votes on nominations he proposes according to these principles, and hope that the President and the majority will return the favor, and work together with us in a truly bipartisan manner.

Mr. ROCKEFELLER. Mr. President, the United States Constitution expressly grants to the Senate the prerogative, responsibility, and duty to determine its ''advice and consent'' to the nominations of all Presidents. This is an important, even awesome mandate, and one no Senator takes lightly. While the Senate's constitutional role is plainly much more than a mere rubber stamp, the President also should be given wide latitude in the people he chooses to run our government with him.

Over the last several weeks, I have voted to approve all but one of President Bush's cabinet nominations. I have done so because, on the whole, I believe his nominees are an impressive, diverse, and well-qualified group who reflect the broad spectrum of America's philosophical and cultural backgrounds.

Of course, without exception, they appear to represent the views of the new President who nominated them. Beyond their fundamental ability to do the job, their views and ideologies have been of little consequence to my decisions. Instead, an important additional characteristic I have looked for, particularly at this time in our nation's history, is a proven ability to bring people together. I seek nominees who will welcome diverse points of view and ideas and who will lead in building consensus. In that vein, I have given my full support to 18 of the cabinet nominations sent to the Senate by President Bush this year.

The nominee before us today, however, is not one I can support.

The United States Attorney General has a particularly compelling and important role, as evidenced by this vigorous debate. The Attorney General is known as the President's legal advisor and the people's lawyer. He or she is charged with leading our nation in interpreting, enforcing, and upholding our laws. He must be a person who embodies balance and evenhandedness, so that all of our citizens feel fully and fairly represented by his actions. He must be able to contribute in a meaningful way to the great challenge of uniting our nation. That is my test for this nomination.

Former Senator John Ashcroft is a man that I have come to know here in the United States Senate. I have served with him on the Senate Commerce Committee and spent many hours observing and participating with him in debate. Throughout his service here, and earlier as Governor and Attorney General in the State of Missouri, he has shown a strong moral compass and passionately held views about what he wants for our country and its citizens.

As Senate colleagues, we have sometimes agreed, and more often disagreed on policy and legislation. In many cases, his legislative agenda was not one that I thought helped or protected West Virginia's working families, seniors and children. But, again, my test for Attorney General is not whether I share John Ashcroft's views on any particular issue or matter.

I have great respect for John Ashcroft as a person of deeply held religious beliefs, and his particular faith is of no consequence for me in this decision. In fact, I have been personally offended by a few who suggest that someone's religion might be a consideration in this or any other decision I make. I unequivocally reject that type of thinking and believe my own long record proves otherwise.

John Ashcroft has been honest in his convictions and his principles, and he has fashioned his public life working to advance his firmly held beliefs. He is a man of strong, unbending ideology—so unbending, in fact, that this is what makes him the wrong choice for Attorney General. I have plainly seen in John Ashcroft a basic inability to compromise or to reach out to those with opposing or different points of view.

The problem is not John Ashcroft's ideology. It is the fact that he never seems able to look beyond that ideology to respect and encompass others' equally strong beliefs and convictions. There is nothing in his long history of public service to suggest he can rise to the challenge of being a uniter, someone who can compromise when necessary to bring us all together.

Furthermore, I have heard John Ashcroft's promise to uphold and enforce our laws, and I take him at his word. But the question of his nomination and the role of Attorney General are not that simple. If they were, then every person nominated to a position charged with upholding the law would be approved—every judge, every U.S. Attorney, every Cabinet Secretary. Reasonable people have honest disagreements about what the law says and how to apply it in different situations. The law is not always precise, and the path to justice is not always clearly marked.

The Attorney General instead has a great deal of discretion, and he must bring to that discretion his own standards, experiences and beliefs. Deciding which cases to defend and which to prosecute, which judges and proposed changes in the law to support and which to oppose, where to dedicate limited resources and where to cut back all are tasks that call for objectivity, balance, and leadership.

Mr. President, after carefully reviewing all of the facts and circumstances, and after lengthy personal reflection, I am not convinced that John Ashcroft can do the job of Attorney General without returning to his life-long rejection of moderation and conciliation.

John Ashcroft proudly judges issues and people on the basis of his own strong ideology. Time and again I have seen John Ashcroft show hostility and

insensitivity toward those who disagree with him or who hold ideals and values that differ from his. He has never hesitated to use his views as a test to judge others. This uncompromising approach is not what I think our country wants and expects from its leaders.

I do not stand in judgment of my former Senate colleague, but I must reject his nomination for Attorney General.

Mr. INOUYE. Mr. President, I had every intention to once again, as I have done in the past, support the President's choice of Cabinet members. The President was elected, he selected his team, and his choices should be respected. In the case of former Senator John Ashcroft's nomination as the U.S. Attorney General, the President's choice will be respected by a majority vote of the Senate. However, if I supported the nomination of Senator Ashcroft, my vote may be misunderstood not only by my supporters and constituents, but by many others.

It should also be noted that the Constitution reserves to the Senate the power of advice and consent as to the President's nominations. I hope that my opposition, together with the opposition of several of my colleagues, will advise the President of our concerns as to his nomination of Senator Ashcroft.

As a person, my experience in serving with Senator Ashcroft has been a positive one, but I have found myself on most occasions casting my vote in disagreement with Senator Ashcroft. For example, he is for the death penalty; I am against the death penalty. He supports doing away with abortion; I am for freedom of choice. I have also examined Senator Ashcroft's record away from Capitol Hill, and I have found that his actions have been consistent with the views he held when we were colleagues on the floor of the Senate.

Senator Ashcroft's actions in the area of civil rights raise questions as to his commitment to preserving the civil rights of all Americans. As the Governor of Missouri, Senator Ashcroft vetoed bills designed to ensure the equal treatment of African American voters. As the Attorney General of Missouri, Senator Ashcroft actively obstructed the voluntary desegregation plan for the City of St. Louis.

Similarly, Senator Ashcroft's record on reproductive rights causes me some concern. Throughout his political life, Senator Ashcroft has believed that there is no constitutional right to abortion, and has worked to overturn Roe v. Wade by State and Federal legislation and by constitutional amendment. Senator Ashcroft's persistent efforts to limit reproductive rights as Missouri's attorney general and Governor, and as a U.S. Senator suggest the policies he might endorse as the U.S. Attorney General.

I realize that I may be in the minority in my opposition to the death penalty, but I have been against execution as a criminal punishment since the start of my political career. For example, I coauthored the measure in the Territorial Legislature of Hawaii that abolished capital punishment, and from that time forward, no convicted criminal in Hawaii has been put to death. Senator Ashcroft does not share my views on this subject. Indeed, as Governor of Missouri, Senator Ashcroft took the position that the death penalty was appropriate for teenagers, and denied that there is any racial disparity in the application of the death penalty. I do not share these beliefs, and I think that Hawaii's experience with the death penalty points to opposite conclusions.

Knowing these and the many other aspects of Senator Ashcroft's record that have come to light in recent days, I have some difficulty seeing him as the next U.S. Attorney General—so much difficulty that I believe I must exercise my Senatorial right of advice and consent and cast my vote in opposition to the nomination to make sure the record is clear.

Mr. BYRD. Mr. President, I daresay that each of us has received an enormous amount of correspondence about the nomination of Senator John Ashcroft to be Attorney General of the United States. The favorable correspondence tends to emphasize support for the Senator's policy priorities and appreciation of his reputation for honesty and integrity. The unfavorable correspondence tends to emphasize concern about the Senator's policy priorities and disapproval of the standards he applied, as Senator, to the disposition of Presidential nominations.

We must begin by deliberating on the standard to be applied to confirmation decisions. The Constitution merely states that the President shall appoint public ministers with the ''advice and consent'' of the Senate. This is not a specific standard, nor even a mandate to review particular features of a nominee's background or capabilities. Rather, we are enjoined to employ our judgment, a faculty which—however much we may lament it—focuses on different factors in considering nominees for different public offices and varies its approach in response to the needs of the times. Thus, when it comes to our duty to provide advice and consent on cabinet nominations, we are plainly in an area where reasonable minds can differ, not only about the criteria, but even about the proper result given particular criteria. No amount of pressure politics—and no slickly packaged talking points—can alter this fundamental fact.

I do not subscribe to the view that, barring the taint of criminality or dishonesty, the President is entitled to have his nominations confirmed. I do subscribe to the view that law enforcement officials of good will and ability can separate their policy preferences from the performance of their official duties.

There is a distinct difference between the role of a Senator as the drafter of laws and the role of the Attorney General as the enforcer of laws. Once Senator Ashcroft places his left hand on the Bible and swears to uphold the laws of the United States, he will be required to enforce even those laws about which he harbors serious reservations. Not only that, but given the fact that John Ashcroft is a deeply religious man, that solemn vow, I am sure, will not be taken lightly by him. Let me quote Senator Ashcroft's own words on that subject: ''As a man of faith, I take my word and my integrity seriously,'' he said. ''So, when I swear to uphold the law, I will keep my oath, so help me God.'' Further, during his confirmation hearings, he stated that he understands this obligation and fully intends to honor it. For example, he indicated that he ''will vigorously enforce and defend the constitutionality'' of the law barring harassment of patients entering abortion clinics, despite any misgivings he might have about that law.

I take him at his word. Although, I do not agree with all of Senator Ashcroft's views, I have no cause to doubt Senator Ashcroft's word or his sincerity regarding his fealty to an oath he will swear before God Almighty. It would be an act of supreme arrogance on my part to doubt his intention to honor such an oath. I will not prejudge him in such a manner.

Given Senator Ashcroft's background, the position to which he has been nominated, and his assurances to the Senate that he will faithfully uphold the laws of the United States, I believe he should be confirmed.

Mr. HATCH. Mr. President, as we prepare to close debate on the nomination of our former colleague, Senator John Ashcroft to be the Attorney General for the United States, I want to first thank a few people. First, let me thank Senator LEAHY, the Ranking Democrat Member on the Judiciary Committee. He faced a difficult task in organizing the hearing for this nomination and working for a fair process. I want to express my gratitude to him and commend his staff, including the Minority Chief Counsel, Bruce Cohen, Senator LEAHY's General Counsel, Beryl Howell, Mary DeOreo, Natalie Carter, and others.

I would also like to thank the other members of the committee for their diligence regarding this matter. In particular let me thank Senator KYL who has been a tremendous advocate in the effort supporting this nomination, and let me also mention Senator SESSIONS for his hard work in behalf of the nomination.

I also want to commend those Senators on the other side of the aisle, who despite intense pressure from and relentless lobbying by a number of left-wing groups have stood up for what they believed was right and announced their support for this nominee. I especially want to express to my colleague on the Judiciary Committee, Senator FEINGOLD, how much my respect for

him has grown watching him speak in support of and cast his vote for John Ashcroft. I know that he has been targeted by petitions and email campaigns orchestrated by People for the American Way and others to pressure him, but he has not buckled, and I congratulate him for his courage to take a principled stand.

I would also like to thank the Administration and Transition staff who worked on this matter. And let me also thank my Committee staff who worked literally around the clock to assist me and my colleagues in moving this nomination forward. I believe everyone on the committee staff has worked tirelessly, but let me especially recognize the Committee's Chief Counsel, Sharon Prost, the Committee's Staff Director, Makan Delrahim, our fine and able counsels, Shawn Bentley, Stephen Higgins, Ed Haden, Rhett DeHart, Gary Malphrus, Rita Lari, Lee Otis, Neomi Rao, Rene Augustine, Pat O'Brien, Larry Block, Alex Dahl, Jeff Taylor, Leah Belaire, and John Kennedy, and our valued staff members, Amy Haywood, Kent Cook, Jessica Caseman, Swen Prior, and Jared Garner, and of course our most able press staff, who kept us informed of the smear campaigns, Jeanne Lopatto and Margarita Tapia. They all worked together as a team with numerous others, including Senator GRAMM's staff, Senator BOND's staff, as well as the able staff of the Senate Leadership, particularly Dave Hoppe and Robert Wilkie of Senator LOTT's staff and Stewart Verdery of Senator NICKLES' staff.

Now let me turn to the nomination itself. Mr. President, I believe we are about to confirm one of the most qualified candidates for the office of Attorney General that we have ever had. John Ashcroft has superb credentials, and he is well-prepared to be Attorney General. In addition to graduating from one of our finest law schools, here is a man who has almost 30 years of public service to this country—eight years as attorney general of his state of Missouri, during which time he was elected by his peers, the 50 state attorneys general, Democrats and Republicans, to become the president of the National Association of Attorneys General. Then he was twice elected governor of Missouri, and again elected by his peers, the 50 state governors, to head the National Governors Association. And then he was elected by Missourians to serve with us here in the United States Senate, where we all came to respect him for his work ethic and his integrity.

As a matter of fact, I don't know of one Senator in the whole United States Senate who would disagree with the statement that this is an honorable man of integrity. When he says he'll do something, he'll do it. I don't know anybody, who, knowing his record and his life, who would conclude that John Ashcroft is anything but one of the finest people they've every met.

But during this process, I think that we have seen some attempts here to undermine a truly good man. Some things have been done throughout this process that were outside the bounds of policy debate, beyond what is decent and right. In the zeal to take a political stand against this nominee for whatever reason, I believe there have been numerous charges, innuendos, and distortions that were neither fair nor accurate. I have tried to help rebut these charges, but they ought not to have been made.

Despite these attacks, I do not believe this good man, this man of deep faith and conviction, will take offense or hold grudges. I believe he will do what he has promised to do. He will be inclusive, forthright, and he will follow the law. He will be an Attorney General for all the people and be an Attorney General of whom we can all be proud. I know he will because I know John Ashcroft, as most of us do. I know he is well-prepared. And I know when he promises to discharge his duties faithfully, to uphold the law and Constitution, enlisting the help and witness of God to do so, he means it, and he will do it.

I look forward to working with him to help make our nation safer, more just, and more in line with our founding principles, embodied in our Constitution. His job is largely about making our nation more safe and free. I am glad we will have an Attorney General who will work toward that goal.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, parliamentary inquiry: Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. LOTT. I ask for the yeas and nays on this vote after my closing remarks.

The PRESIDING OFFICER (Mr. FITZGERALD). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. One other inquiry: Has all time been used except for the time reserved for the majority leader?

The PRESIDING OFFICER. That is correct.

Mr. LOTT. Mr. President, I want to begin by assuring all of my colleagues that I will not use the entire 15 minutes, so we can begin the vote hopefully 5 or 10 minutes early. Senators need to be aware of that so they can come and begin the vote within the next 10 minutes.

Mr. President, this nomination has not been an easy one for the Senate Judiciary Committee or the Senate to deal with without some difficulty. You can argue about why that is. But we have come to it, and now we are ready to vote.

Only nine times in our history has the Senate defeated one of the President's nominees for his Cabinet and only once since 1959. When I was a new Senator in 1989, I observed what I thought was a terrible miscarriage of justice against former Senator John Tower. John Tower should have been Secretary of Defense. I was really disappointed in how he was savaged and how some of his colleagues in this body treated him.

Only one time in 40 years have we not confirmed the President's nomination for a Cabinet position, and that, I am convinced, was a terrible mistake.

Today we will confirm former Senator John Ashcroft to be Attorney General. That is as it should be.

I have been disappointed by this nomination's process through the Judiciary Committee, and to a degree here, although less so on the floor of the Senate. I thought the rhetoric got too hot. It did get into the range of being unfair. But I don't think we should let that permanently alter the atmosphere we have tried to set in the Senate.

I have tried to get through some items that would allow us to move forward in a positive vein.

I think congratulations also would be in order, and certainly a word of appreciation for the leadership on the Democratic side of the aisle. Senator DASCHLE has tried to help get us through this nomination. He made it clear that he would not participate in a filibuster. I do not recall in the 30-something years I have been watching the Senate very closely a Cabinet nomination being filibustered. It would be a terrible precedent. He spoke out, saying he wouldn't do it, that he wouldn't support it. To those who said we shouldn't have a filibuster, I say thank you for that.

There will be those who will speak out about what this vote means, if it is not 60 votes, or if it is 69 over 61, or whatever it may be. I think that will be a futile waste of time. I don't think we should read anything into it. This nominee is going to be confirmed, and he should be. The President of the United States, George W. Bush, is entitled to have his selection to be Attorney General.

I want to say also that I know John Ashcroft. I know him as a man. I knew him as a Senator. I knew him as a close personal friend, and I knew him as a member of the Singing Senators as we sang all across this country together. I have been in his home. I know his wife. I know his children. I know his constituents. I have been all over Missouri. He has been in my home. He knows my friends, and we have been together in many instances. I don't know this person who has been described in some of the debate; some of these allegations about things he did, or didn't do, or whether or not he is a man of his word. I do not know that person. I

know John Ashcroft. I know the man who served in this Chamber. I know his abilities, his education, and his qualifications. I don't think there has ever been a more qualified person by background, education, and experience to be Attorney General than John Ashcroft.

I remember 8 years ago, when I voted to confirm the previous Attorney General, thinking that this nominee was not qualified, and I think she proved it. But I voted for her because I thought President Clinton was entitled to his nominee at that point.

So we have a man who is qualified. But it is more than that. John Ashcroft is a good man of high veracity and who will keep his word.

Senator BYRD said yesterday, I believe, in his speech that he has made a commitment he is going to uphold the law. What more should we want: A pound of flesh?

I realize this is all about other things. That is OK. But it is unfair to this man.

Maybe the ravens will be heard never more. But forevermore you can quote me on this and remind me on this. John Ashcroft will go on to be one of the best Attorneys General we have ever had. He will be conscientious. He will show capability. He will be sensitive. He will be honest. He will enforce the laws—some laws that have been ignored the last 8 years—and maybe there are some people who are a little nervous about that. But, as we say in all kinds of different circles in America, I am here to vouch for their man. I vouch for John Ashcroft. I will stand by him. And you mark my words, he will go on to be a great and valuable Attorney General.

So let's move on. Let's work together, as I know we can do.

I accept the olive branch extended by Senator RUSS FEINGOLD. That is what he said. I extend the olive branch to show a willingness to work together and reach across the aisle and across all the other things that could divide us. He showed courage. I will not forget it. In fact, I think I maybe didn't forget it in advance because we have already worked out an agreement on how we are going to bring up a bill about which he cares a lot.

But that was an important statement on his part. I accept it. We accept it. That is the way we should proceed.

This new President has changed the tone in this city. Absolutely, people are astounded by his willingness to reach out and to listen and to be heard. He is meeting with everybody. He has even seen motion pictures with them. So he is doing his part. Let us make sure the Senate does its part.

Vote for John Ashcroft. You won't regret it. Then let's move on to important legislation. Let's argue about ideas. Let's argue about how to make education better. Let's argue about how to give tax relief—''return to sender,'' as the Senator from Georgia said. That is what the people want us to talk about. They want to get this vicious and partisan stuff behind us and deal with real issues. I don't think insurmountable damage has been done. I believe we can build on the other things we have done in the last month.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is, Does the Senate advise and consent to the nomination of John Ashcroft of Missouri to be Attorney General of the United States? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 58, nays 42, as follows:

[Rollcall Vote No. 8 Ex.]

YEAS—58

Allard	Ensign	Miller
Allen	Enzi	Murkowski
Bennett	Feingold	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Roberts
Brownback	Gramm	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Byrd	Hagel	Smith (NH)
Campbell	Hatch	Smith (OR)
Chafee	Helms	Snowe
Cochran	Hutchinson	Specter
Collins	Hutchison	Stevens
Conrad	Inhofe	Thomas
Craig	Jeffords	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Dodd	Lugar	Warner
Domenici	McCain	
Dorgan	McConnell	

NAYS—42

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham	Murray
Bingaman	Harkin	Nelson (FL)
Boxer	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Johnson	Rockefeller
Carper	Kennedy	Sarbanes
Cleland	Kerry	Schumer
Clinton	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden

The nomination was confirmed.

The PRESIDING OFFICER. In my capacity as a Senator from the State of Illinois, I ask unanimous consent that the motion to reconsider be laid upon the table and the President be immediately notified that the Senate has given consent to this nomination, and the Senate then resume legislative session.

Without objection, it is so ordered.

LEGISLATIVE SESSION

MORNING BUSINESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of Illinois, I now ask consent that the Senate be in a period for morning business.

Without objection, it is so ordered.

COMMITTEE ON APPROPRIATIONS RULES—107TH CONGRESS

Mr. STEVENS. Mr. President, the Senate Appropriations Committee has adopted rules governing its procedures for the 107th Congress. Pursuant to Rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator BYRD I ask unanimous consent that a copy of the Committee rules be printed in the RECORD.

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

SENATE APPROPRIATIONS COMMITTEE RULES
107TH CONGRESS

I. Meetings

The Committee will meet at the call of the Chairman.

II. Quorums

1. Reporting a bill. A majority of the members must be present for the reporting of a bill.

2. Other business. For the purpose of transacting business other than reporting a bill or taking testimony, one-third of the members of the Committee shall constitute a quorum.

3. Taking testimony. For the purpose of taking testimony, other than sworn testimony, by the Committee or any subcommittee, one member of the Committee or subcommittee shall constitute a quorum. For the purpose of taking sworn testimony by the Committee, three members shall constitute a quorum, and for the taking of sworn testimony by any subcommittee, one member shall constitute a quorum.

III. Proxies

Except for the reporting of a bill, votes may be cast by proxy when any member so requests.

IV. Attendance of staff members at closed sessions

Attendance of Staff Members at closed sessions of the Committee shall be limited to those members of the Committee Staff that have a responsibility associated with the matter being considered at such meeting. This rule may be waived by unanimous consent.

V. Broadcasting and photographing of Committee hearing

The Committee or any of its subcommittees may permit the photographing and broadcast of open hearings by television and/or radio. However, if any member of a subcommittee objects to the photographing or broadcasting of an open hearing, the question shall be referred to the Full Committee for its decision.

VI. Availability of subcommittee reports

To the extent possible, when the bill and report of any subcommittee are available, they shall be furnished to each member of the Committee thirty-six hours prior to the Committee's consideration of said bill and report.

VII. Amendments and report language

To the extent possible, amendments and report language intended to be proposed by Senators at Full Committee markups shall be provided in writing to the Chairman and Ranking Minority Member and the appropriate Subcommittee Chairman and Ranking Minority Member twenty-four hours prior to such markups.

VIII. Points of order

Any member of the Committee who is floor manager of an appropriation bill, is hereby authorized to make points of order against any amendment offered in violation of the Senate Rules on the floor of the Senate to such appropriation bill.

FALSE CLAIMS ACT

Mr. GRASSLEY. Mr. President, today I want to speak about an important issue for the taxpayers of this