from Nevada, for his kind words. As always, we rely on his leadership here, too. I appreciate what he said.

NOMINATION OF JOHN ASHCROFT

Mr. LEAHY. The President of the United States sent to the Senate the nomination of John Ashcroft to be the Attorney General of the United States. In advance of him sending it, to accommodate the new President and expedite the consideration of the nomination, I convened 3 days of hearings on this nomination over the 4-day period from January 16 to January 19.

The Republican leadership had announced weeks ago that all 50 Republican Senators would be voting in favor of this nomination, but I declined to prejudge the matter.

The Committee on the Judiciary has done the best it could to handle this nomination fairly and fully, and we did it through hearings of which all members of the committee, on both sides of the aisle, and all Members of the Senate I believe can be proud.

Having reviewed the hearing record and the nominee's responses to written follow-up questions from the Judiciary Committee, I come today to announce and explain my opposition to the nomination of John Ashcroft to be the Attorney General of the United States.

I take no pleasure in having reached this decision. I have voted or will be voting to confirm nearly all of the President's Cabinet nominees. No one in this Chamber more than I would have wanted a nomination for Attorney General that the Senate could have approved unanimously. As the ranking member of the Senate Judiciary Committee, I am going to be working closely with the new Attorney General, often on a daily basis. I would have wanted to begin that relationship with enthusiastic support for whomever the President chose.

I also had the privilege of working with John Ashcroft during the 6 years he served as a Senator, and I consider it a privilege. Most of us know him and like him. I admire his personal devotion to his family and to his religion. While we are not always in agreement, I respect his commitment to the principles he firmly holds, and I respect his right to act on those principles.

The fact that many of us served with Senator Ashcroft and know and like him does not mean we should not faithfully carry out our constitutional responsibility in acting on this nomination. No one nominated to be Attorney General of the United States should be treated in any special way, either favorably or unfavorably, by this body because he or she once served in the Senate. Our guide must be constitutional duty, not friendship.

Most of us believe that a President has a right to nominate to executive branch positions those men and women whom he believes are going to carry out his agenda and his policies, but it is only with the consent of the Senate that the President may proceed to appoint.

The Constitution, interestingly enough, is silent on the standard Senators should use in exercising this responsibility. Every Senator has the task of discerning what that standard should be, and then each Senator has to decide how it applies in the case of any nomination, especially a controversial nomination such as that of Senator Ashcroft.

The Senate's constitutional duty is to advise and consent; it is not to advise and rubber stamp. Fundamentally, the question before us is whether Senator Ashcroft is the right person at this moment for the critical position of Attorney General of the United States.

This is an especially sensitive time in our Nation's history. Many seeds of disunity have been carried aloft by winds that often come in gusts, most recently out of Florida. The Presidential election, the margin of victory, the way in which the vote counting was halted by the U.S. Supreme Court remain sources of public concern and even of alienation. Deep divisions within our country have infected the body politic. We experienced the closest Presidential election in the last 130 years, possibly in our history.

For the first time, a candidate who received half a million more votes lost. The person who received half a million fewer popular votes was declared the victor of the Presidential election by 1 electoral vote.

The Senate, for the first time in our history, is made up of 50 Democrats and 50 Republicans. Although this session of Congress is less than 1 month old, each political party has already had its leader serve as majority leader. Both Senator DASCHLE and Senator LOTT have served as majority leader.

Senate committees have already operated under both Democratic and Republican chairs. I suspect Ph.D. dissertations will be written about this for years to come.

Much has been made of what has come to be known as the Ashcroft evolution, where activist positions he has held and valiantly advanced appear now to be suddenly dormant in deference, as he said, to settled law, at least during the confirmation hearings.

But leaving Senator Ashcroft aside for a moment, it must not be left unremarked that he is not the only politician who has sent conflicting signals about his view of Government. We have already seen two distinct sides of the new President since he was declared the victor after the November election. One side is the optimistic face of bipartisanship—a sincere and knowledgeable President determined to work with like-minded Democrats and Republicans to overhaul the way we educate our children. This is a side of hope, cooperation, and compromise. In fact, in his encouraging inaugural address barely 10 days ago, President Bush acknowledged the difficulties of these times and the very special needs of a divided nation. He said: ''While many of our citizens prosper, others doubt the promise, even the justice, of our own country.'' He recognized that deep differences divide us and pledged ''to work to build a single nation of justice and opportunity.'' I applaud President Bush for those words. At the luncheon after the inauguration, I told him how much those words meant to me.

These crucial weeks and months after the divisive election are an especially sensitive time, when hope and healing are waiting to emerge. But they are also fragile, like the first buds of the sugar maple in the spring in my own State of Vermont.

On the other side of the ledger, though, is the President's decision to send to the Senate the nomination of John Ashcroft. Senator Ashcroft is a man we know and respect, but a man we also know held some of the most extreme positions on a variety of the most volatile social and political issues of our time: Civil rights, women's rights, gun violence, discrimination against gay Americans, and the role of the judiciary itself.

Appointing the top law enforcement officer in the land is the place to begin, if the goal is to bring the country together. I wish the President had sent us a nomination for Attorney General who would unite us rather than divide us. But that did not happen. This is a nomination that had controversy written all over it from the moment it was announced. It should surprise no one that today we find ourselves in the middle of this battle. It should surprise no one that the polls in this country show the American people are deeply divided on this nomination.

It was, I believe, a crucial miscalculation from the President and his advisers to believe this nomination would have brought all of us together. Or perhaps, as some have suggested, it is an instance where consensus was not the objective.

Many organizations and their members have weighed in on either side of this debate. Some advocates for the nominee have been especially critical of the membership groups that oppose this nomination. It must be said that the only political pressure groups that have had a decisive role in this nomination are the far right wing elements of the Republican Party who insisted on this particular nominee and even bragged to the press that they vetoed other, more moderate, candidates—Republican candidates—for this job.

What is crystal clear to me is that the nomination of John Ashcroft does not meet the standard the President himself has set. In those who doubt the promise of American justice—and there are those—it does not inspire confidence in the U.S. Department of Justice.

The Senate can help mend these divisions, it can give voice to the disaffected, it can help to restore confidence in our Government, but only if

it remains true to its own constitutional responsibilities. At a time of intense political frustration and division, it is especially important for the Senate to fulfill its duty.

One of the abiding strengths of our democracy is that the American people have opportunities to participate in the political process, to be heard, and to believe that their views are being taken into account. When the American people vote, every vote is important, every vote should be counted. Then when we hold hearings, and when we vote, we have to be cognizant that each of us has sworn an oath to uphold the Constitution. Each action we take as Senators has to be consistent with that oath.

There are 280 million Americans in this wonderful and great country of ours. Of those 280 million Americans, there are only 100 people who have the license and the obligation to vote on this nomination: 100 Members of the Senate, a body that should be the conscience of the Nation, and sometimes is. Two hundred eighty million Americans expect us to make up our minds on this.

There is a reason many of us believe that the job and role of Attorney General is the most important job in the Cabinet. Why? Because it is not simply a job where you carry out what the President tells you to do; it is far more than that. The extensive authority and discretion to act in ways that go beyond Presidential orders are part of the important role of the Attorney General and require that our Attorney General have the trust and confidence of all the people. Democrats, Republicans, moderates, conservatives, liberals, white, black, no matter who, rich, poor, they must all have confidence in this one Cabinet position above all others, because the Attorney General is a lawyer for all the people. He is the chief law enforcement officer of the country.

The Attorney General is not the lawyer for the President. The President has a White House counsel for that. The Attorney General is the lawyer for all of us, no matter where we are from, no matter what party we belong to. We all look to the Attorney General to ensure evenhanded law enforcement. And we look to the Attorney General for the protection of our constitutional rights—including freedom of speech, the right to privacy, a woman's right to choose, freedom from Government oppression, and equal protection of the laws. The Attorney General plays a critical role in bringing the country together, bridging racial divisions, and inspiring people's confidence in their own Government.

Senator Ashcroft has often taken aggressively activist positions on a number of issues that deeply divide the American people. He had a right to take these activist positions. But we have a duty to evaluate how these positions would affect his conduct as Attorney General.

John Ashcroft's unyielding and intemperate positions on many issues raise grave doubts, both about how he will interpret the oath he would take as Attorney General to enforce the laws and uphold the Constitution and also about how he will exercise the enormous power of that office.

Let me be very clear on this. I am not objecting to this nominee simply because I disagree with him on ideological grounds. I have voted for many nominees with whom I have disagreed on ideological grounds. I am not applying the ''Ashcroft standard'' as he applied it to Bill Lann Lee and other Presidential nominees over the last 6 years. My conclusion is based upon a review of John Ashcroft's record as the attorney general and then Governor of Missouri, as a Senator, and also on his testimony before the Judiciary Committee. It is based on how he has conducted himself and what positions he has taken while serving in high public office while sworn to uphold the Constitution, basically the same oath one would take as Attorney General.

President Kennedy observed that to govern is to choose. What choices the next Attorney General makes about resources and priorities will have a dramatic impact on almost every aspect of the society in which we live. The American people are entitled to be sure not just that this nominee says he will enforce the laws on the books but also to be sure what those priorities are going to be, what choices he is likely to make, what changes he will seek in the law. Most importantly, we are entitled to know what changes he will seek in the constitutional rights that all Americans currently enjoy—that includes, of course, what positions he will urge upon the Supreme Court—in particular, whether he is going to ask the Supreme Court to overturn Roe v. Wade or to impose more burdensome restrictions on a woman's ability to secure legal and safe contraceptives.

On several of these issues, such as his lifelong opposition to a woman's right to choose, his support for measures to criminalize abortion even in cases of rape and incest, and his efforts to limit access to widely used contraceptives, Senator Ashcroft has moved far outside the mainstream. The controversial positions taken by this nominee and his record require us to reject this nomination as the wrong one for the critical position of Attorney General of the United States at this time in our history.

It is in part because I know John Ashcroft to be a person of strong convictions and consistency that I am concerned that he could not disregard those long-held convictions if he is confirmed by this body. It troubles me that he took essentially the same oath of office as attorney general of Missouri that he would take as Attorney General of the United States, but he acted differently than what he tells us he would do now. Senator Ashcroft assumed a dramatically different tone and posture on several matters during the course of his hearing.

The new John Ashcroft did not oppose the nomination of James Hormel because of his sexual orientation. The new John Ashcroft is now a supporter of the assault weapons ban. The new John Ashcroft is an ardent believer in civil rights, women's rights, and gay rights. The new John Ashcroft now believes Roe v. Wade is settled law. In fact, the more I heard him refer to matters he has consistently opposed, laws he consistently tried to rewrite, the more he referred to them as settled law, the more unsettling that became.

Occasionally, we would get a peek behind the confirmation curtain. What we saw was deeply disturbing. Senator Ashcroft was unrepentant in the way he torpedoed the nomination of Judge Ronnie White to the Federal district court, despite calls from some Republican Senators who personally apologized to Judge White for the shabby treatment he received. Senator Ashcroft, on the one hand, denied that sexual orientation had anything to do with his opposition to the Hormel nomination, then left the distinct, gratuitous impression that there was something unspoken, unreported, yet unacceptable about Mr. Hormel that somehow disqualified him from serving the United States as Ambassador to Luxembourg, even though Luxembourg said they would welcome his appointment as Ambassador.

Senator Ashcroft repeatedly declined to show the slightest remorse for his appearance at Bob Jones University, for the enthusiastically supportive interview he gave with a pro-confederate magazine, Southern Partisan, and for some of the most inflammatory language I have heard about the Federal judiciary since the bitter and violent days of the civil rights movement.

Most of us in this body have known the old John Ashcroft, but during the hearings we met a new John Ashcroft. Our challenge has been to reconcile the new John Ashcroft with the old John Ashcroft, to find the real John Ashcroft who would sit in the Attorney General's office. Were the demurrals of his testimony real, or were they delicate bubbles that would burst and evaporate a year or a month or a day from now under the reassertion of his long-held beliefs.

So we come back again to why all this matters. Why would we treat this position differently than, say, Secretary of Commerce or Transportation? Obviously, if he had been nominated to either of those, we would not have the controversy we now have. We treat it differently because of this: The position of Attorney General is of extraordinary importance. The judgments and priorities of the person who serves as Attorney General affect the lives of all Americans.

We Americans live under the rule of law. The law touches us all every day in ways that affect our safety and our health and our very rights as citizens. Our Attorney General is our touchstone in the fair and full application of

our laws. The Attorney General not only needs the full confidence of the President, he or she also needs the full confidence of the American people.

The Attorney General controls a budget of more than $20 billion, directs the activities of more than 123,000 attorneys, investigators, Border Patrol agents, deputy marshals, correctional officers, other employees, in more than 2,700 Justice Department facilities around the country, actually more than 124 in foreign cities. The Attorney General supervises the selection and the actions of 93 U.S. attorneys and their assistants and the U.S. Marshals Service and its offices in each State. The Attorney General supervises the FBI and its activities around the world and in this country, as well as the INS, the DEA, the Bureau of Prisons, and a whole lot of other Federal law enforcement departments.

The Attorney General evaluates judicial candidates, recommends judicial nominees to the President, advises on the constitutionality of bills and laws. The Attorney General determines when the Federal Government is going to sue an individual or a business or even a local government. The Attorney General decides what statutes to defend in court, what arguments to make to the Supreme Court or other Federal courts, even State courts, on behalf of the U.S. Government.

As I said at the confirmation hearings for Edwin Meese to be Attorney General, while the Supreme Court has the last word in what our laws means, the Attorney General, more importantly, has the first word.

The Attorney General exercises broad discretion—in fact, most of that discretion is not even reviewed by the courts; one might say it is very rarely and then only sparingly reviewed by the Congress—over how to allocate that $20 billion budget, then how to distribute billions of dollars a year in law enforcement assistance to State and local governments, and coordinate task forces on important law enforcement priorities. These are the priorities the Attorney General sets.

The Attorney General makes the decision when not to bring prosecution as well as when to bring prosecution, when to settle a case and when to go forward with a case. Having been a prosecutor, I know these are the decisions that can set policy more than anything that a Governor or a President or Member of Congress might do. A willingness to settle appropriate cases once the public interest has been served rather than to pursue endless and divisive and expensive appeals, as John Ashcroft did in the Missouri desegregation cases, is a critical qualification for the job.

There is no appointed position within the Federal Government that can affect more lives in more ways than the Attorney General. No position in the Cabinet is more vulnerable to politicization by one who puts ideology and politics above the law. We should expect —all of us, not just 100 Senators but 280 million Americans—to have an Attorney General who will ensure evenhanded law enforcement and equal justice for all, protection of our basic constitutional rights to privacy, including a woman's right to choose and our rights to free speech and to freedom from government oppression. We look to the Attorney General to safeguard our marketplace from predatory and monopolistic activities and to protect our air and our water and our environment.

The Attorney General, among all the members of the President's Cabinet, is the officer who must be most removed from politics, if he is going to be effective and if he is going to fulfill the duties of that office.

Now, I have a deep and abiding respect for the Senate and its vital role in our democratic government. Twenty-six years in the Senate have given me the privilege to know and work with hundreds of others in this body. I cherish those friendships, and not only the friendships of the other 99 Senators here today, but the others I have served with over two-and-a-half decades. But far beyond friendship, my first duty as a U.S. Senator from Vermont is to the Constitution. I have sworn to uphold the Constitution.

In the aftermath of the national election in November, I have gone back to that Constitution many times. This weekend, I re-read the appointments clause.

I cannot give consent to the nomination of John Ashcroft to be Attorney General and thus be true to my oath of office. I do not have the necessary confidence that John Ashcroft can carry on the great tradition and fulfill the important role of Attorney General of the United States.

The American people certainly are not united in any such confidence. This nomination does not help President Bush to fulfill his pledge to unite the Nation.

I will vote no when the Senate is asked to give its advice and consent to the nomination of John Ashcroft to be Attorney General of the United States.

To further elaborate, Mr. President, the week before the Inauguration of the new President, the Senate Judiciary Committee conducted three days of hearings over four days on the nomination of former Senator John Ashcroft to be the next Attorney General of the United States. We heard not only from the nominee but also from thirteen witnesses called on his behalf and thirteen witnesses who opposed his nomination. While a number of my colleagues, most notably the entire Republican caucus, expressed support for this nomination before the hearing, I declined to pre-judge the nominee until I had heard his testimony and that of other witnesses, and reviewed their responses to follow-up written questions. I rise today to express my opposition to this nomination.

The Appointments Clause of the Constitution gives the Senate the duty and responsibility of providing its advice and consent. The Constitution is silent on the standard that Senators should use in exercising this responsibility. This leaves to each Senator the task of figuring out what standard to apply and, most significantly, leaves to the American people the ultimate decision whether they approve of how a Senator has fulfilled this constitutional duty.

Many of us believe that the President has a right to appoint to executive branch positions those men and women whom he believes will help carry out his agenda and policies. Yet, the President is not the sole voice in selecting and appointing officers of the United States. The Senate has an important role in this process. It is advise and consent, not advise and rubberstamp. The Senate has a duty to take this constitutional function seriously.

There was a time, of course, when ''senatorial courtesy'' meant cursory attention to former members of this body. Senators nominated to important government positions did not even appear before Committees for hearings. Certainly, the Senate was and should continue to be courteous to all nominees, but we should not use a double standard for members who have not been re-elected to the Senate. No one nominated to be Attorney General should be treated specially either favorably or unfavorably just because he once served in the Senate. The fact that many of us served with, know and like John Ashcroft does not excuse the Senate from faithfully carrying out its constitutional responsibility with regard to this nomination. Our constitutional duty rather than any friendship for Senator Ashcroft must guide us in the course of these proceedings and on the final vote on his nomination.

This is especially the case in these times when the new President is emerging from a disputed election that was decided after vote counting in Florida was ordered to stop through the intervention of the U.S. Supreme Court. The resolution of this election remains a source of public concern and sharp division in our country, reflected in a deeply divided electorate and demands from all sides for bipartisan leadership.

These are not auspicious beginnings for a new Administration and this nomination has been a troubling signal. John Ashcroft has taken aggressively activist positions on a number of issues on which the American people feel strongly and on which they are deeply divided. On several of those issues, such as his lifelong opposition to a woman's right to choose and support for measures to criminalize abortion, even in cases of rape and incest, and to limit access to widely-used contraceptives, he is far outside the mainstream.

The President has said his choice is based on finding someone who will enforce the law, but we need more than airy promises on this score to vest the extensive authority and important role

of the Attorney General in John Ashcroft. His assurances that he would enforce the law cannot be the end of our inquiry, as some would urge. The heart of the Attorney General's job is to exercise discretion in deciding how and to what extent the law should be enforced, and what the Government will say it means.

The essence of prosecutorial discretion is that some laws get enforced more aggressively than others, some missions receive priority attention and some do not. No prosecutor's office—unless you are an independent counsel—has the resources to investigate every lead and prosecute every infraction. A prosecutor may choose to enforce those laws that promote a narrow agenda or ones that protect people's lives and neighborhoods. We need an Attorney General who has the full trust and confidence of the people that the laws will be enforced fairly and across the board, and that any changes the Attorney General will seek legislatively or in defining critical constitutional rights before the U.S. Supreme Court will be for the benefit of all Americans and reflect the mainstream of our values.

John Ashcroft's unyielding and intemperate positions on many issues raise grave doubts in my mind both about how he will interpret the oath he would take as Attorney General to enforce the laws and uphold the Constitution, and about how he will exercise the enormous discretionary power of that office. Let me be clear: I am not objecting to this nominee simply because I disagree with him on ideological grounds.

My conclusion is based upon a review of John Ashcroft's record as the Attorney General of Missouri and then Governor, as a United States Senator, and his testimony before the Judiciary Committee. That is to say, it is based on how he has conducted himself, and what positions he has taken, while serving in high public office and while sworn to uphold the Constitution. Let me give some specific examples.

As Governor, John Ashcroft vetoed two bipartisan bills that would have made it easier to register voters in the City of St. Louis, a city with a very substantial African-American population. These bills would have directed election authorities to allow outside groups, such as the League of Women Voters, to register voters. They were designed to rectify an imbalance between St. Louis County, a predominantly white area where outside groups were allowed to register voters, and St. Louis City, whose election commissioners (appointed by John Ashcroft) forbade the practice. Due in large part to that imbalance, only 73 percent of St. Louis City residents were registered to vote, while 81 percent of County residents were registered. (St. Louis Post-Dispatch, February 2, 1989). Faced with an opportunity to correct that imbalance, however, Governor Ashcroft refused. He vetoed one bill that dealt specifically with the St. Louis City Election Board, claiming it was unfair to single out one region for this requirement. The following year, the legislature addressed that criticism and passed a bill that pertained to the entire state. Nonetheless, Governor Ashcroft vetoed it again. (New York Times, January 14, 2001).

This opposition to legislation that would have ensured that black and white voters were treated equally in Missouri is all the more disturbing in light of the serious charges that have arisen in the wake of the Florida vote in the presidential election. It is critical that our new Attorney General have a sterling record on voting rights issues.

Neither Senator Ashcroft's handling of this matter as Governor nor his response to the Committee's questions about it inspire confidence. Indeed, it was distressing that Senator Ashcroft, when given the chance to explain his actions, chose to engage in an apparent ''filibuster'' by reading his entire veto messages, which were neither concise nor responsive to the questions he was asked. As a result, the time of his questioner expired and Senator Ashcroft was able to avoid confronting this issue fairly and completely.

Set against John Ashcroft's questionable record on voting rights issues, his record while he served as Attorney General and Governor of Missouri on fighting a voluntary desegregation plan for the St. Louis school system is particularly troublesome. My concern is not merely that he fought a voluntary desegregation plan, since I can well appreciate the volatility of using busing to achieve equal educational opportunity. My concern is over the manner in which he aggressively fought this voluntary plan, the defiance he showed to the courts in those proceedings and his use of that highly-charged issue for political advantage rather than for constructive action. Most significantly, on at least four crucial points, the testimony he gave to the Committee about this difficult era in Missouri's history was incomplete and misleading, which he essentially conceded when I corrected the record on the second day of the hearing.

First, Senator Ashcroft repeatedly claimed during the first day of his testimony that the state was not a party to the lawsuit brought to desegregate the schools in St. Louis. He testified, in response to my questions that ''the state had never been a party to the litigation.'' (1/16/01 Tr., at p. 101). He repeated this assertion that the state was not a party to the litigation, stating, ''if the state hadn't been made a party to the litigation and the state is being asked to do things to remedy the situation, I think it's important to ask the opportunity for the state to have a, kind of, due process, and the protection of the law that an individual would expect,'' (Id., at p. 101).

Yet, Missouri was, indeed, made a party to the St. Louis lawsuit in 1977, the year after Ashcroft took over as the state's Attorney General. See Adams v. United States, 620 F.2d 1277,1285 (8th Cir.), cert. denied, 449 U.S. 826 (1980). I pointed out this fact at the outset of the second day of the hearings. (1/17/01 Tr., at p. 2–3), and Senator Ashcroft thanked me for the opportunity to clarify the record. (Id., at 2–3).

Second, Senator Ashcroft also repeatedly claimed in his testimony that the state was not liable. He testified that ''I opposed a mandate by the federal government that the state, which had done nothing wrong, found guilty of no wrong, that they should be asked to pay . . .'' (1/16/01 Tr., at p. 100). Again, he testified ''the state had not been found really guilty of anything.'' (Id.). He explained that ''I argued on behalf of the state of Missouri that it could not be found legally liable for segregation in St. Louis schools because the state had never been party to the litigation.'' (Id.). He further explained, ''Frankly, I thought the ruling by the court that the state would have to pay when there was not showing of a state violation to be unfair.'' (Id. at p. 101). He maintained this position in response to questions by Senator KENNEDY and testified that segregation in St. Louis ''was not a consequence of any state activity.'' (Id., at p. 123).

In fact, however, the state was found directly liable for illegal school segregation in St. Louis. In March 1980, the Eighth Circuit ruled that both the state and the city school board were liable for segregation. Adams v. United States, 620 F.2d 1277, 1280, 1291, 1294–95 (8th Cir.), cert. denied, 449 U.S. 826 (1980). The state's improper conduct included previously mandating, over a period of years, the inter-district transfer of black students into segregated city schools to maintain segregation. Id. at 1280. In other words, when Senator Ashcroft testified that the State ''had not been found really guilty of anything,'' the fact was that it had been found guilty of imposing forced busing on African-Americans in order to segregate them. And the ''mandate by the federal government'' that he opposed was a mandate to remedy the State's own flagrant violation of Brown v. Board of Education.

In June 1980, the district court made clear the state's liability, explaining that ''the State defendants stand before the Court as primary constitutional wrongdoers who have abdicated their remedial duty. Their efforts to pass the buck among themselves and other state instrumentalities must be rejected.'' Liddell et al. v. Bd. of Ed. of City of St. Louis, 491 F. Supp. 351, 357, 359 (E.D. Mo. 1980), aff'd 667 F.2d 643 (8th Cir.), cert. denied, 454 U.S. 1081 (1981). Attorney General Ashcroft appealed this liability finding, but the Eighth Circuit rejected his argument as ''wholly without merit.'' Liddell, supra, 667 F.2d at 655. The U.S. Supreme Court denied the state's attempt to appeal the decision. 454 U.S. 1081, 1091 (1981).

Again, in 1982, the Eighth Circuit reiterated that the state defendants were ''primary constitutional wrongdoers'' that could be ordered to take remedial action. Liddell, 677 F.2d 626, 628–29, (8th Cir.), cert. denied 459 U.S. 877 (1982). The U.S. Supreme Court again denied the state's attempted appeal.

Yet again, as his attorney general term was ending in 1984, the Eighth Circuit rejected the state's arguments against voluntary city-suburb desegregation, and the Supreme Court again denied review. Liddell, 731 F.2d 1294, 1305–9 (8th Cir.), cert. denied, 469 U.S. 816 (1984).

I pointed out the multiple findings of state liability by the federal courts at the outset of the second day of the hearing, and Senator Ashcroft conceded the accuracy of that correction. (1/17/01 Tr., at p. 2–3). It is a shame, indeed, that he only acknowledged the settled law of the case 20 years after the courts decided it.

Third, Senator Ashcroft testified that in the St. Louis case, ''[i]n all of the cases where the court made an order, I followed the order, both as attorney general and as governor.'' (1/16/01 Tr., at p. 125–126). He repeated this claim in response to questions from Senator HATCH, stating that ''we complied with the orders of the federal district court and of the Eighth Circuit court of appeals and of the United States Supreme Court.'' (1/17/01 Tr., at p. 197).

While as attorney general, John Ashcroft may have complied with the technical terms of the court orders, his vigorous and repeated appeals show that he did so reluctantly and the scathing criticism he received from the courts shows that they lacked confidence in how he was fulfilling his obligations as an officer of the court. This is troubling. In 1981, the federal district court ordered the state and the city board to submit voluntary desegregation plans, but attorney general Ashcroft failed to comply. Consequently, the court threatened in March 1981 to hold the state in contempt if it did not meet the latest deadline and explicitly criticized the state's ''continual delay and failure to comply'' with court orders. (AP 3/5/81). The court also stated the following: ''The court can draw only one conclusion—the state has, as a matter of deliberate policy, decided to defy the authority of the court.''(St. Louis Post-Dispatch 3/5/81). The district court also stated in a 1984 order, ''if it were not for the state of Missouri and its feckless appeals, perhaps none of us would be here today'' (St. Louis Post-Dispatch, December 30, 1984).

Fourth, Senator Ashcroft denied that he ''opposed voluntary desegregation of the schools'' and said ''nothing could be farther from the truth.'' (1/16/01 Tr., at p. 99). He asserted that ''I don't oppose desegregation'' and that ''I am in favor of integration,'' and only opposed the State being asked to pay this very substantial sum of money over a long course of years.'' (Id., at p. 101).

I take Senator Ashcroft at his word that he supports integration. This only makes more disturbing his public statements made in the heat of political campaigns that exacerbated an already difficult situation over desegregation in Missouri schools. In 1981, he opposed a plan by the Reagan Administration for voluntary desegregation, based not just on cost but also because it would allegedly attract ''the most motivated'' black city students, even though the city school board itself disagreed. (Newsweek, May 18, 1981). I cannot understand how John Ashcroft, leading advocate of vouchers to facilitate ''parental choice'' for those motivated to leave the public school system, could at the same time oppose the parental choice involved in voluntary school desegregation for ''motivated'' African-Americans. In 1984, he assailed the St. Louis desegregation plan as an ''outrage against human decency.'' (St. Louis Post-Dispatch, June 15, 1984). In his 1984 gubernatorial campaign, he proudly stated that he had done ''everything in his power legally'' to fight the plan and suggested that listeners should ''[a]sk Judge (William) Hungate who threatened me with contempt.'' (UPI, February 12, 1984).

Commentators at the time were critical of John Ashcroft's use for political gain of the difficult challenges of desegregating the schools. For example, the Post-Dispatch commented that Ashcroft and his Republican gubernatorial primary opponent in 1984 were ''trying to outdo each other as the most outspoken enemy of school integration in St. Louis,'' and were ''exploiting and encouraging the worst racist sentiments that exist in the state.'' (St. Louis Post-Dispatch, March 11, 1984). An African-American newspaper, the St. Louis American, had even harsher words for Ashcroft. ''Here is a man who has no compunction whatsoever to standing on the necks of our young people merely for the sake of winning political favor,'' it wrote. ''Ashcroft implies at every news conference, radio and television interview that he couldn't care less what happens to black school children.'' (St. Louis Post-Dispatch, February 29, 1984).

Finally, during the course of the hearing, Senator Ashcroft tried to deflect any criticism of his own actions over desegregation by trying to blame others. Specifically, he twice cited in his oral testimony and again in his responses to written questions, an incident ''when the state treasurer balked at writing the checks'' and ''it became necessary to send a special delegation from my office to him to indicate to him that we believed compliance with the law was the inescapable responsibility . . . fortunately, the state treasurer at the time made the decision to abandon plans for a separate counsel and to go ahead and make the payments.'' (1/17/01 Tr., at p. 196; see also 1/16/01 Tr., at p. 100–103).

The treasurer to whom Senator Ashcroft referred was the late Mel Carnahan. As I clarified on the record, treasurer Carnahan faced personal liability for making a payment without the warrant of the commissioner of administration of the state of Missouri and properly issued the check as soon as he had the appropriate legal authority to do so. (1/18/01 Tr., at p. 130). In other words, Mel Carnahan did not, as Senator Ashcroft implied, seek to defy the court's order; he merely made sure that legally mandated procedures for complying with that order were followed. The insinuation that Mel Carnahan was the obstacle to desegregating Missouri's schools is false and reprehensible. Governor Carnahan is rightly credited with bringing this lengthy litigation to a close and fashioning progressive, bipartisan legislation to appropriate funds sufficient for a remedy and allowing the court to withdraw from active supervision of the case.

In my view, Senator Ashcroft's thinly-veiled disparaging testimony about his deceased political opponent were mean and offensive.

In his written response to questions from Senator KENNEDY, Senator Ashcroft presents his role in the desegregation case as simply an attempt to oppose interdistrict remedies, not intradistrict remedies. This is the same argument he made as Attorney General to justify bringing appeals from desegregation orders in 1981, 1982, and 1984. As explained above, the courts repeatedly rejected this argument. It should be noted in this regard that John Ashcroft did not merely appeal those orders that imposed interdistrict remedies—he also appealed orders mandating that the State aid in making improvements within St. Louis itself, and orders that simply told the State to enter into discussions concerning the possibility of interdistrict cooperation. See, e.g., Liddell v. Board of Education, 667 F.2d 643. It should also be noted that the courts found that Missouri was constitutionally responsible for segregation in St. Louis in part because it mandated the transfer of black suburban students into segregated city schools to enforce segregation. Liddell v. Bd. of Educ., 491 F. Supp. 351, 359 (E.D. Mo. 1980).

Ignorance Is His Defense—Southern Partisan and Bob Jones University. Senator Ashcroft's record on the racially-charged issues of voting rights and desegregation make more worrisome his explanations for and associations with Southern Partisan magazine and Bob Jones University. In short, his explanation is ignorance.

In 1998, Senator Ashcroft gave an interview to the Southern Partisan, a magazine which has gained a reputation for espousing racist views due to its praise in past articles of such figures as former KKK leader David Duke and its defense of slave-holders. At the hearing, Senator BIDEN asked Senator Ashcroft about this interview and his

association with this publication. Senator Ashcroft disavowed any knowledge about the publication or its reputation. He said, ''On the magazine, frankly, I can't say that I knew very much at all about the magazine. I've given magazine interviews to lots of people. . . . I don't know if I've ever read the magazine or seen it'' (1/17/01 Tr., p. 146). He told Senator FEINGOLD that he thought the magazine was ''a history journal.'' (Id., at 219).

Yet, it is difficult to square Senator Ashcroft's quoted remarks in the Southern Partisan interview with his purported ignorance about the publication. He praised the magazine, saying ''Your magazine also helps to set the record straight'' on what he called ''attacks the [historical] revisionists have brought against our founders.'' He added even more praise, saying, ''You've got a heritage of doing that, of defending Southern patriots like Lee, Jackson and Davis.'' Southern Partisan, at 28 (2d Quarter, 1998). It is difficult to reconcile Senator Ashcroft's testimony not to have known ''very much at all'' about the magazine with his own statements in the interview praising its ''heritage.'' Indeed, he subsequently admitted that ''I know they've been accused of being racist.'' (1/17/01 Tr., p. 152).

Putting that aside, however, I find it more troubling that despite the multiple opportunities he was given to distance himself from this magazine and evidence regret for giving the interview, he refused to do so. Instead, he responded with a platitude saying, ''I condemn those things which are condemnable.'' (Id., at 147). We need more than platitudes from the next Attorney General. He made clear that what he mostly regretted is that this interview became an issue, saying: ''And I regret that speaking to them is being used to imply that I agree with their views.'' (1/17/01 Tr., p. 146). Would it really hurt him to say, ''I made a mistake. It's an obnoxious publication and its positions are offensive''? It troubles me to see a public official going around applauding racially offensive institutions, and it troubles me even more to see him refusing to admit his mistakes and try to heal the offense.

The same claim of ignorance was Senator Ashcroft's excuse for accepting a speaking engagement and an honorary degree from Bob Jones University. This school is not accredited. It did not admit African American students until 1971. Then, from 1971 to May 1975, the University accepted no applications from unmarried African American students, but did accept applications from African Americans ''married within their race.'' Bob Jones University v. U.S., 461 U.S. 574 (1983). Even after it lost its tax exempt status in the mid-1970's, Bob Jones University maintained a ban on interracial dating. This policy changed on March 3, 2000, when Bob Jones announced on Larry King Live that the policy was dropped after an outcry over the visit to the University by then candidate, now President Bush.

The school, however, continues to discourage interracial dating. After announcing that the school would drop the interracial dating ban, Bob Jones told the student body at their daily chapel service the following day that they must tell their parents if they became involved in an interracial relationship and parents must send a letter to the dean of men or women approving the relationship before the university would allow it. Two days later, he announced that the school would drop the parental permission requirement but that students who wanted to engage in ''serious dating relationships'' against their parents' approval would be referred to counseling by the university. That is mandatory special ''counseling'' for adults engaged in interracial dating in the year 2001. That is a disgrace to our nation and all that we stand for.

As recently as March 2000, Bob Jones, the leader of the school, made clear on national TV that he views the Pope as the ''anti-Christ'' and both Catholicism and Mormonism as ''cults.'' Senator Ashcroft claimed that he did not know about the school's beliefs at the time he spoke. (St. Louis Post-Dispatch, March 3, 2000). Yet, when he spoke to the students at Bob Jones University, he appeared to condone the policies of the school from which they were graduating by thanking each of them ''for preparing themselves in the way that you have.''

His assertion of ignorance was once again met with some skepticism, as even the press pointed out that ''he was attorney general [of Missouri] when the U.S. Supreme Court denied the university's tax exempt status, and was governor when a state Supreme Court candidate ignited a controversy with pro-Bob Jones statements in 1992.'' (Id.). Specifically, in 1992, then Governor Ashcroft considered appointing Carl Esbeck to fill, at the time, the seventh and last open seat on the Missouri Supreme Court, but this proposed nomination proved controversial due to Esbeck's criticism of the U.S. Supreme Court's ruling that Bob Jones University was not entitled to tax-exempt status due to its discriminatory practices. (St. Louis Post-Dispatch, August 6, 1992). Having seen the offense caused by his own efforts to appoint a judge who had been supportive of Bob Jones University in 1992, one might have expected Senator Ashcroft to be more sensitive, and more cautious about accepting an honorary degree from the same institution seven years later.

Again, as with the Southern Partisan interview, Senator Ashcroft has never apologized for accepting an honorary degree from this school or for associating with it. Instead, during his unsuccessful Senatorial campaign, in response to his opponent's challenge to take this action, Senator Ashcroft ''fired a puzzling return volley, saying he will give back all his degrees if Mr. Carnahan will return campaign contributions from pro-choice groups.'' (St. Louis Post-Dispatch, March 3, 2000). If Senator Ashcroft believes that support for Roe v. Wade is on a moral, legal, or political par with racial bigotry and the demonization of the Catholic and Mormon Churches, he is further out of the mainstream than I thought. If not, he missed a major opportunity to heal an offense for a great many Americans with an evasive and irrelevant response.

By contrast, after then candidate, now President Bush spoke at Bob Jones University in February 2000, he expressed regret for the appearance, in recognition of the ''anti-Catholic and racially divisive views'' associated with that school. Another Republican colleague, who also received an honorary degree from Bob Jones University, Representative ASA HUTCHINSON, later took a public step to disassociate himself from the school, calling the school's policies ''indefensible.'' (New York Times, March 1, 2000).

Senator Ashcroft apparently has no regrets about accepting an honorary degree from Bob Jones University. On the contrary, Senator Ashcroft made clear in response to questions from both Senator DURBIN and Senator FEINSTEIN that he would consider a repeat visit to Bob Jones University as U.S. Attorney General. (1/17/01 Tr., pp. 237, 243). Senator DURBIN asked, ''you would not rule out, as attorney general of the United States, appearing at that same school?'' Senator Ashcroft responded, ''Well, let me just say this, I'll speak at places where I believe I can unite people and move them in the right direction.'' (Id. at p. 237). Senator FEINSTEIN asked ''In six months, you receive an invitation from Bob Jones University. You now know about Bob Jones University. Do you accept that invitation?'' Senator Ashcroft indicated that, ''it depends on what the position of the university is; what the reason for the invitation is,'' but the short answer is ''I don't want to rule out that I would ever accept any invitation there.'' (Id., at p. 243).

This response was dismaying for a man who seeks the post of lawyer and advocate for all the people of this country. During the hearing, I suggested that he ''put that honorary degree in an envelope and send it back and say this is your strongest statement about what you feel about the policies.'' (Id., at p. 262). Maybe at a minimum he could send it back with a statement that he will consider associating with Bob Jones University again if and when the school publicly disavows all of its racially and religiously offensive positions. That, at least, would be better than hanging a degree from an infamous bastion of discrimination on the walls of the Attorney General's office. Ignorance is a weak defense for associating with institutions that notoriously espouse racially insensitive and discriminatory philosophies and policies. An inability to recognize one's

mistakes, and to acknowledge the sensitivities of others, is a serious flaw in a man who would be the Attorney General of all the people.

Finally, despite the deep concern about his judgment in appearing at Bob Jones University, Senator Ashcroft has been less than forthright with the Committee. During my short tenure as Chairman of the Committee, I asked him personally for a copy of his commencement address, in whatever form it was in, at a meeting on January 4, 2001. I then wrote to Vice President CHENEY, as head of the transition office, twice requesting copies of any tape recordings or transcriptions of that speech. In my January 11 letter, I reported that Bob Jones University advised my staff a tape was available but would not be released without Senator Ashcroft's permission and specifically requested ''a tape of the commencement ceremony in May, 1999, in which Senator Ashcroft participated.'' The next day, Senator Ashcroft furnished the Committee with a transcription of the speech, on the same day the videotape of Senator Ashcroft's speech was broadcast on Larry King Live. This videotape has never been provided to the Committee. Moreover, the Committee's request for the videotape of the entire commencement proceeding remains unanswered.

Senator Ashcroft proudly told Southern Partisan magazine that ''I have been as critical of the courts as any other individual, probably more than any other individual in the Senate. I have stopped judges . . . and I will continue to do so.'' In fact, he led the Senate in the politics of personal destruction by distorting the records of presidential nominees whose political ideologies or ''lifestyles'' he disliked.

Let me start with a review of how Senator Ashcroft worked to block the nomination of James C. Hormel to be the Ambassador to Luxembourg, and then how he explained his actions before the Committee on January 17, 2001.

Ambassador Hormel had a distinguished career as a lawyer, a businessman, educator, and philanthropist. He had diplomatic experience as well. He was eminently qualified for the job of U.S. Ambassador to Luxembourg, Luxembourg's ambassador to the U.S. said the people of his country would welcome him, and a clear majority of Senators supported his confirmation.

Yet he was denied a Senate debate and vote. Senator Ashcroft and Senator HELMS were the only two members of the Foreign Relations Committee who voted against favorably reporting the nomination of James Hormel to serve as U.S. Ambassador to Luxembourg.

In June 1998, at a luncheon with reporters, Senator Ashcroft is reported to have said:

> People who are nominated to represent this country have to be evaluated for whether they represent the country well and fairly. His conduct and the way in which he would represent the United States is probably not up to the standard that I would expect. He has been a leader in promoting a lifestyle. And the kind of leadership he's exhibited there is likely to be offensive to . . . individuals in the setting to which he will be assigned. Boston Globe (June 24, 1998).

Senator Ashcroft also said that a person's sexual conduct ''is within what could be considered and what is eligible for consideration'' for ambassadorial nominees. (San Diego Union-Tribune June 19, 1998). The implication of these remarks seems clear to me. But do not rely on my judgment. Listen instead to one of Senator Ashcroft's Republican colleagues of the time, Senator Alphonse D'Amato. Senator D'Amato wrote, in a letter to Majority Leader TRENT LOTT, that he was ''embarrassed'' that Hormel's nomination had been held up by other Republican Senators. He wrote, ''I fear that Mr. Hormel's nomination is being obstructed for one reason, and one reason only: the fact that he is gay.'' (Id.)

When I questioned him at the hearing about his remarks at the 1998 luncheon, Senator Ashcroft did not deny making them. Instead, he asked us to ignore their clear import. I asked him directly: ''Did you block his nomination from coming to a vote because he is gay?'' Senator Ashcroft answered, ''I did not.'' I then asked ''Why did you vote against him? And why were you involved in an effort to block his nomination from ever coming to a vote?'' Senator Ashcroft implicitly acknowledged that he did engage in blocking the nomination from coming to a vote, saying,

> Well, frankly, I had known Mr. Hormel for a long time. He had recruited me, when I was student in college, to go to the University of Chicago Law School. . . . But I did know him. I made a judgment that it would be ill-advised to make him ambassador based on the totality of the record. I did not believe that he would effectively represent the United States in that particular post. (1/17/01 Tr., p.191).

Senator Ashcroft then proceeded to claim, without directly addressing the Hormel nomination, that ''[s]exual orientation has never been something that I've used in hiring in any of the jobs, in any of the offices I've held. It will not be a consideration in hiring at the Department of Justice. It hasn't been for me.'' (Id, at 192).

I brought Senator Ashcroft back to the question of why he had opposed James Hormel's nomination. I said: ''I'm not talking about hiring at the department, I'm talking about this one case, James Hormel. If he had not been gay, would you have at least talked to him before you voted against him? Would you have at least gone to the hearing? Would you have at least submitted a question?'' (Id.) When evasion did not work, Senator Ashcroft simply flatly refused to answer, stating, ''I'm not prepared to redebate that nomination here today,'' and repeated his claim that his opposition to the Hormel nomination was based on ''the totality of his record.'' (Id, at 192–193). Three Senators asked the nominee in written questions to specify the factors that led to his opposition to James Hormel, but he continued to refuse to do so, citing again ''the totality of Mr. Hormel's record'' as the basis for his opposition.

The story does not end there. The implication of Senator Ashcroft's remarks what some have called ''creepy'' about being ''recruited'' by and ''knowing'' Mr. Hormel was that some personal experience with that nominee played a role in his decision to block it. (New York Times, January 20, 2001). Yet, by letter dated January 18, 2001, Mr. Hormel expressed ''very deep concern'' about this implication since he could not recall ''ever having a personal conversation with Mr. Ashcroft,'' ''no contact with him of any type since . . . nearly thirty-four years ago, in 1967.'' Mr. Hormel also clarified that he did not personally ''recruit'' John Ashcroft to law school; he had simply admitted him, along with hundreds of other students, in his capacity as Dean of Students. Mr. Hormel concluded, ''For Mr. Ashcroft to state that he was able to assess my qualifications to serve as Ambassador based upon his personal long-time relationship with me is misleading, erroneous, and disingenuous.''

I am forced to agree with Mr. Hormel's assessment. There certainly still has not been any forthright explanation from Senator Ashcroft for his insistence that, contrary to the views of the President, the Ambassador from Luxembourg, and the vast majority of his Senate colleagues, Mr. Hormel would not ''effectively represent the U.S.'' in Luxembourg. Indeed, given another chance to explain his position through responses to written questions, Senator Ashcroft has simply repeated his boilerplate language about the ''totality'' of Mr. Hormel's record, adding no specificity beyond the fact that Luxembourg is ''the most Roman Catholic country in all of Europe.'' He does not explain the significance of this fact.

At the hearing, Senator FEINGOLD asked Senator Ashcroft whether, as Attorney General, he would permit employment discrimination against gay men and lesbians, pointing in particular to Senator Ashcroft's public statement that ''I believe the Bible calls [homosexuality] a sin, and that's what defines sin for me.'' Senator FEINGOLD stated that ''Attorney General Reno clarified that sexual orientation should not be a factor for FBI clearances.'' Then he asked Ashcroft, ''As attorney general would you continue and enforce this policy?'' Again, Senator Ashcroft did not answer the question directly with a clear statement against discrimination based on sexual orientation at the FBI, saying, ''I have not had a chance to review the basis for the FBI standard and I am not familiar with it. I would evaluate it based upon conferring with the officials in the bureau.'' In my view, the American people are entitled to expect from

their Attorney General more forthright and decisive leadership on the simple question of whether the FBI will be permitted to discriminate on the basis of sexual orientation. The correct answer to that question is not ''maybe,'' it is ''no.''

This is troubling. Senator Ashcroft's answers raise serious question about whether he would adopt a policy as Attorney General that a person's sexual orientation could be a basis for denying a security clearance. If sexual orientation can be used to deny a security clearance for a government job, gay men and lesbians would be barred from numerous government positions, including in the Justice Department, as surely as if John Ashcroft, as Attorney General, were to exclude them personally.

In October 1999, Senator Ashcroft spearheaded a campaign to defeat the nomination of Missouri Supreme Court Judge Ronnie White to serve as a federal district court judge. Like many Senators, I was deeply troubled by Senator Ashcroft's sneak attack on Judge White, who was the first nominee to a federal district court to be rejected on the floor of the Senate in over 50 years. Senator Ashcroft's testimony to the Committee did nothing to allay my concerns.

There can be no serious question that Senator Ashcroft distorted Judge White's record. To give just one example, in one of the three opinions that Senator Ashcroft cited as supposed evidence of a ''procriminal jurisprudence,'' Judge White took a narrower view of the Fourth Amendment—and a broader view of the powers of the police—than the U.S. Supreme Court took a few years later. That is to say, Senator Ashcroft characterized Judge White as ''procriminal'' for taking a position that was more pro-law enforcement than the position of a majority of the conservative Rehnquist Court.

Senator Ashcroft has told us that he based his opposition to James Hormel and other nominees on ''the totality of the record.'' In the case of Judge White, the totality of the record was very different than what Senator Ashcroft led his colleagues to believe. While I state again and unequivocally that I do not charge Senator Ashcroft with racism, I cannot help but think that he was willing to play politics with Judge White's reputation in a manner that casts serious doubt on his ability to serve all Americans as our next Attorney General. In my mind, and in the minds of many Americans, he engineered a party-line vote to reject Judge White not because Judge White was unqualified, but because he wanted to persuade the voters of Missouri that John Ashcroft was tougher on crime and more pro-death penalty than his Democratic opponent. The voters saw through this ploy, and Senators should consider it carefully in deciding whether to give their consent to this nomination. In doing so, Senators may ask themselves whether a man who used his public office to besmirch a respected judge for crass political ends is the sort of man the American people deserve as their Attorney General.

I want to discuss a few of the circumstances surrounding the White nomination that cause me particular concern.

As an initial matter, I am disturbed by Senator Ashcroft's repeated claims that he torpedoed Judge White at the urging of law enforcement groups that had come forward to oppose the nomination. On the Senate floor, Senator Ashcroft told his colleagues that law enforcement officials in Missouri had ''decided to call our attention to Judge White's record in the criminal law.'' (CONGRESSIONAL RECORD, October 4, 1999, at S11872). But after the Senate voted to reject the nomination, the press reported that Senator Ashcroft had actually solicited opposition to Judge White from at least some law enforcement officials. (St. Louis Post-Dispatch, October 8, 1999). This detail—who contacted whom came up at the hearing, and was at the center of more attempts by Senator Ashcroft to shade the facts.

At the hearing, Senator DURBIN noted while questioning Senator Ashcroft that the Missouri Chiefs of Police had refused to accept his invitation to oppose Judge White. Senator Ashcroft responded, ''I need to clarify some of the things that you have said. I wasn't inviting people to be part of a campaign.'' Senator DURBIN followed up by asking, ''Your campaign did not contact these organizations?'' The nominee tried to side-step the issue by making a general statement rather than responding directly to the question he was asked. He said, ''My office frequently contacts interest groups related to matters in the Senate. We don't find it unusual. It's not without precedent that we would make such a request to see if someone wants to make a comment about such an issue.''

According to the St. Louis Post-Dispatch, Senator Ashcroft's office contacted at least two police groups with respect to Judge White 's nomination, and the contacts went well beyond a mere ''request to see if someone wants to make a comment.'' The president of the Missouri Police Chiefs Association—one of Missouri's largest police groups—said that he was contacted by Senator Ashcroft's office and asked whether the Association would work against the nomination. The Association declined. Its president said that he knew Judge White personally and had always known him to be ''an upright, fine individual.'' (St. Louis Post-Dispatch, October 8, 1999.)

According to the same article, Senator Ashcroft's office also solicited opposition to Judge White from the Missouri Federation of Police Chiefs. Vice President Bryan Kunze said the group got involved after Senator Ashcroft's office sent them information about the nomination. Kunze is quoted as saying ''I never heard of Judge White until that day.'' (Id.)

What does this mean? It means that there was a simpler, and more direct answer to Senator DURBIN's question: ''yes.'' Senator Ashcroft's office did contact law enforcement organizations. And it did so not just to ''see if'' they wanted ''to make a comment,'' but to solicit their opposition to Judge White. At a minimum, Senator Ashcroft shaded the truth when he suggested that his opposition to Judge White was prompted by the concerns of Missouri's law enforcement community. While some law enforcement officials eventually came to oppose Judge White's nomination, some of that opposition was instigated and orchestrated by Senator Ashcroft himself.

Moreover, although Senator Ashcroft did not acknowledge the fact, many law enforcement officials strongly supported Judge White. At the hearing, I put into the record a strong letter of support and endorsement from the chief of police of the St. Louis Metropolitan Police Department for Judge White, which Senator Ashcroft received before the vote on Judge White's nomination. I also put into the record another letter from the Missouri State Lodge of the Fraternal Order of Police from shortly after the vote, stating on behalf of 4,500 law enforcement officers in Missouri that they viewed Judge White's record as, ''one of the judges whose record on the death penalty has been far more supportive of the rights of victims than the rights of criminals.'' Yet when Senator Ashcroft went to the floor of the Senate in October 1999 to disparage Judge White's record as ''procriminal,'' he gave a one-sided account, ignoring the law enforcement officials who had come out in support of Judge White's nomination or declined Senator Ashcroft's invitations to work against him.

It is worth reviewing the history that led up to Senator Ashcroft's denouncement of Judge White on the floor, because that history sheds some light on the genesis of the supposed ''procriminal'' concerns. President Clinton first nominated Judge White in June 1997. Like many other judicial nominations during the Clinton Administration, the nomination was held in limbo for more than two years before the Senate finally voted on it in October 1999. During most of that time, there was no mention of Judge White's judicial record. Senator Ashcroft has said that he began to review Judge White's opinions ''upon his nomination'' (CONGRESSIONAL RECORD, October 4, 1999, at S11871), yet he did not elaborate on his reasons for opposing Judge White until August 1999, when he told reporters that Judge White had ''a very serious bias against the death penalty.'' At the time, the death penalty was a hot issue in Senator Ashcroft's re-election campaign against the late Governor Carnahan, who had recently commuted the sentence of a death row

inmate at the request of Pope John Paul II. It was Governor Carnahan who, in 1995, appointed Judge White to the Missouri Supreme Court.

When Judge White came before the Judiciary Committee in May 1998, he was introduced by two members of Missouri's congressional delegation, Senator BOND and Congressman CLAY. Both urged Judge White's confirmation. Congressman CLAY also stated that he had discussed the nomination with Senator Ashcroft, and that Senator Ashcroft had polled Judge White's colleagues on the Missouri Supreme Court—all Ashcroft appointees—and they all spoke highly of Judge White and said he would make an outstanding federal judge. That was yet another set of endorsements for Ronnie White that Senator Ashcroft did not himself acknowledge when he spoke out on the nomination.

After the hearing, Senator Ashcroft submitted 21 written questions to Judge White, 15 more than were submitted to the other nominees at the same hearing. Among those questions were two concerning an action—neither an unlawful nor an unethical one—that Judge White had taken as a State legislator in 1992 that contributed to the defeat of an anti-abortion bill supported by then-Governor Ashcroft. There was also one question about a death penalty case in which Judge White had written a lone dissent.

When Senator Ashcroft joined a handful of Senators and voted against Judge White in Committee, he inserted a short statement in the Committee records on May 21, 1998, to explain his vote. Making reference to the anti-abortion bill that was the subject of those written questions, he said: ''I have been contacted by constituents who are injured by the nominee's manipulation of legislative procedures while a member of the Missouri General Assembly. This contributes to my decision to vote against the nomination.'' He made no mention of concern about any other issue, including the death penalty case about which he had also asked Judge White a written question. Apparently then, as of May 1998, Senator Ashcroft's investigations into Judge White's judicial record had not unearthed any ''procriminal'' concerns.

Senator Ashcroft's testimony and answer to written questions that reproductive rights played no part in his opposition to Judge White is flatly contradicted by both the questions he asked about the judge as a state legislator calling ''an unscheduled vote that resulted in the defeat of a measure designed to limit abortions,'' and the statement Senator Ashcroft put in the Judiciary Committee mark up record in May 1998, in which he referred to Judge White's ''manipulation of legislative procedures while he was a member of the Missouri General Assembly'' and expressly stating that ''contribute[d] to my decision.''

This dissembling is disingenuous, but explains the troubling fact that Senator Ashcroft did not fully question Judge White about his death penalty decisions or law enforcement concerns at his hearings before the Judiciary Committee. That is the purpose of nomination hearings, as Senator Ashcroft well knows. At his own hearings, Senator Ashcroft was afforded a full and fair opportunity to answer questions and address concerns. Judge White did not have that opportunity. He was ambushed on the floor of the Senate, with no opportunity to explain his decisions or defend his reputation.

Judge White finally got that opportunity during the hearings on this nominee, and I urge all Senators to read his testimony. He was gracious, he was dignified, and he set the record straight. This is what that record shows.

Ronnie White grew up in a poor, segregated neighborhood in St. Louis. He worked his way through high school, college, and law school. He had a distinguished legal career in private practice and as city counselor for the City of St. Louis and lawyer for the St. Louis Police Department. In 1989 he was elected to the Missouri legislature, where he was twice selected to serve as chairman of the judiciary committee. In 1995, he became the first African-American to serve on the Missouri Supreme Court.

The Facts on Judge White's Capital Cases. At the hearing last week, Senator Ashcroft admitted that he had characterized Judge White's record as being ''pro-criminal,'' but claimed that he ''did not derogate his background.'' I believe that Senator Ashcroft's attacks on Judge White on the Senate floor went well beyond simply characterizing his record. Senator Ashcroft suggested that Judge White had ''a tremendous bent toward criminal activity'' (CONGRESSIONAL RECORD, October 5, 1999, at S11933) and ''a serious bias against a willingness to impose the death penalty'' (CONGRESSIONAL RECORD, October 4, 1999, at S11872), and argued that, if confirmed, ''he will use his lifetime appointment to push law in a procriminal direction, consistent with his own personal political agenda'' (Id.). In my 26 years in the Senate, I have never heard an attack like that on the Senate floor against a sitting judge. I can scarcely imagine anything more derogatory that could be said about a judge than that he uses his office to pursue a personal procriminal agenda. Such accusations should not be lightly made. The facts show that they were baseless.

Fact one: Judge White voted to uphold the death penalty 40 times in 58 death penalty cases. In other words, he voted to uphold the death penalty in about 70 percent of the capital cases that came before him. One of Senator Ashcroft's own appointees to the Missouri Supreme Court, the late Ellwood Thomas, had a much higher percentage of votes for reversal of death sentences.

Fact two: In 55 out of 58 capital cases that came before Judge White—that is 95 percent of the time—he ruled the same way as at least one of his Ashcroft-appointed colleagues. Judge White dissented in only seven out of 58 death penalty cases, and he was the sole dissenter in only three of those cases. The other four times, one or more of the Ashcroft judges agreed with Judge White that the defendant was entitled to a new trial or a new sentencing hearing.

Fact three: In leading the campaign to defeat Judge White, Senator Ashcroft specifically criticized just three cases in which Judge White filed a lone dissent. In each case, Judge White's dissents were well-reasoned and entirely defensible. The first was a 1996 case called State v. Damask (936 S.W.2d 565), which raised the issue of the constitutionality of drug interdiction checkpoints in two Missouri counties. Police officers dressed in camouflage were stopping motorists in the dark of night at the end of a lonely highway exit ramp and looking for evidence to allow them to search their vehicles for drugs. These stops were challenged by some motorists as a violation of the Fourth Amendment's prohibition against unreasonable search and seizure, but the Missouri Supreme Court decided that these were constitutional law enforcement procedures.

Judge White filed a reasoned and respectful dissent. He agreed with his colleagues that ''trafficking in illegal drugs is a national problem of the most severe kind.'' He also agreed that traffic stops such as these could be lawful, if conducted in a reasonable way. However, he found, based on the specific facts of the case, that the checkpoint operations at issue were unduly intrusive and therefore unconstitutional.

Just a few months ago, a case with facts similar to the Missouri case made its way to the U.S. Supreme Court. In City of Indianapolis v. Edmond, 121 S. Ct. 447 (2000), a six-justice majority of the Court found that drug interdiction checkpoints like the ones that were upheld by the Missouri Supreme Court are unconstitutional per se. Indeed, the Court went much farther in protecting the rights of motorists than Judge White went in his dissent.

Judge White testified last week that the U.S. Supreme Court had vindicated his decision to dissent in the Damask case. That is clear to any competent lawyer reading the two cases. Yet before the Supreme Court's ruling, Senator Ashcroft said that Judge White's dissent in Damask revealed a ''tendency . . . to rule in favor of criminal defendants and the accused in a . . . procriminal manner.'' (CONGRESSIONAL RECORD, October 4, 1999, at S11872). A fairer characterization would be that Judge White faithfully followed the law in striking a reasonable balance between the freedoms that we all enjoy as motorists and the interests of law enforcement.

Senator Ashcroft has stubbornly refused to retract his criticism of Judge White's dissent in Damask, notwithstanding the subsequent decision by

the U.S. Supreme Court vindicating Judge White's position. Instead, Senator Ashcroft in his responses to written questions mischaracterized the facts of Damask, claiming that ''the police had created a checkpoint designed to stop only those who behaved in a way to justify individualized suspicion.'' As is clear from the majority decision, however, the police in Damask stopped all motorists who approached the checkpoint, without any individualized suspicion of wrongdoing, virtually identical to the fact in the Missouri case in which Judge White dissented.

One would think that any Senator who characterized as ''procriminal'' a position taken by Justices O'Connor and Kennedy, among others, would be embarrassed and quick to apologize. Yet we have yet to hear an apology or even a retraction by Senator Ashcroft on this point.

The other two dissents that Senator Ashcroft cited as evidence of Judge White's ''procriminal'' tendencies were filed in death penalty cases: State v. Johnson, 968 S.W.2d 123 (Mo. 1998), and State v. Kinder, 942 S.W.2d 313 (Mo. 1996). Both cases involved brutal and shocking murders, and we heard a lot about those murders at the hearings. While my heart goes out to the victims, I am troubled by the implication of many of my Republican colleagues that those accused of particularly egregious crimes are somehow undeserving of the fair trial and due process rights guaranteed to all Americans. As Senator Ashcroft's own models of conservative jurisprudence have written, ''the more reprehensible the charge, the more the defendant is in need of all constitutionally guaranteed protection for his defense.'' (Danner v. Kentucky, 525 U.S. 1010 (1998) (Scalia, J., joined by Thomas, J., dissenting from the denial of certiorari)). Focusing on the egregious facts of (rather than the legal analysis underlying) a death penalty case is a disingenuous and inappropriate way of evaluating the qualifications of sitting judges.

Judge White's dissents in Johnson and Kinder properly turned on the legal issues in those cases. In Johnson, the key legal issue was whether or not the defendant received constitutionally sufficient assistance from his lawyer. In Kinder, the issue was whether the defendant was entitled to a new trial with an unbiased judge. These were difficult issues, and as many of my Republican colleagues have acknowledged, reasonable minds could differ on how they should have been resolved. Some respected legal commentators have reviewed the facts in these cases and the relevant legal precedents and concluded that Judge White was right to dissent. I especially urge all Senators to read Stuart Taylor's thoughtful and thorough analyses of these cases in the National Journal on October 16, 1999, and January 13, 2001.

It is of course the right and duty of all Senators to familiarize themselves with a nominee's record before voting on his nomination. I respect Senator Ashcroft's diligence in undertaking a review of Judge White's decisions. What I do not understand are the apparent distortions of Judge White's record, the intemperate attacks, and the implication that judges should apply a lower standard of review in capital cases. When Senator Ashcroft began his campaign against Judge White, retired Missouri Supreme Court Judge Charles Blackmar—a Republican appointee—said that Judge White's votes in capital cases were ''not a significant diversion from the mainstream,'' and added this strong criticism of Senator Ashcroft: ''The senator seems to take the attitude that any deviation is suspect, liberal, activist and I call this tampering with the judiciary because of the effect it might have in other states that have the death penalty where judges, who might hope to be federal judges, feel a pressure to conform and to vote to sustain the death penalty.'' (St. Louis Post-Dispatch, August 21, 1999). As a strong believer in judicial independence, I share Judge Blackmar's concern.

To conclude on this point, Senator Ashcroft's words and actions with respect to the Ronnie White nomination raise serious concerns about his sense of fair play, his willingness to demonize those with whom he disagrees, and his respect for judicial independence. In my view, what America needs is an Attorney General who examines the facts and the law carefully and impartially and then articulates his positions respectfully, not one who distorts the facts and plays politics with the law.

In his first day of testimony, Senator Ashcroft stated, in response to my questions, that he had opposed Bill Lann Lee, President Clinton's nominee for Assistant Attorney General for Civil Rights, because he had ''serious concerns about his willingness to enforce the Adarand decision, which was a recent decision of the United States Supreme Court. . . . Mr. Lee did not indicate a clear willingness to enforce the law based on that decision.'' (1/16/01 Tr., at p. 96). When I tried to explore what Senator Ashcroft perceived to be Mr. Lee's failure in this regard, Senator Ashcroft explained that when Mr. Lee was asked at his confirmation hearing what the Adarand standard was, ''he did not repeat the strict scrutiny standard of 'narrowly tailored and directly related. . . . He stated another standard.'' (Id, at 97). This is simply not true.

When Bill Lann Lee testified before the Senate Judiciary Committee on October 22, 1997, he had the following colloquy with Chairman HATCH:

Chairman HATCH: These cases [Croson and Adarand] would also stand for the proposition, wouldn't they, that strict scrutiny would be required in all governmental racial classification matters?

Mr. LEE: Yes, that is correct, that strict scrutiny is required and that properly designed and properly implemented affirmative action programs are consistent with the strict scrutiny test under the Fourteenth and Fifth Amendment.

Chairman HATCH: Would you agree that Adarand stands for the proposition—the Supreme Court case of Adarand—stands for the proposition that State-imposed racial distinctions are presumptively unconstitutional, that that presumption can be overcome only by a strong basis in evidence of a compelling interest and should be narrowly tailored? Have I stated that pretty correctly?

Mr. LEE: Yes, and I agree with that.

Chairman HATCH: All right . . . .

(Bill Lann Lee Confirmation Hearing, Senate Judiciary Committee, October 22, 1997, Transcript of Proceedings, pages 41–42).

Moreover, when I asked Senator Ashcroft about Bill Lann Lee, he referred to the District Court's decision on remand in the Adarand case, which found unconstitutional the contracting affirmative action program that is the subject of that litigation. He failed to note, however, that the Tenth Circuit has since reversed that decision, finding that the contracting program did in fact meet strict scrutiny. Adarand Constructors v. Slater, 228 F.3d 1147 (10th Cir. 2000).

To this day, I do not understand Senator Ashcroft's opposition to the nomination of Bill Lann Lee, but I do know that the purported reason he gave at his own nomination hearing is simply not supported by the record.

At the hearing, Senator Ashcroft and the witnesses called on his behalf made claims about the diversity of his appointments to the state courts and his cabinet while he was Governor. These claims were clearly designed to rebut any inference that his actions and record with regard to presidential nominees such as Judge Ronnie White, Bill Lann Lee, and others, or his associations with Southern Partisan magazine or Bob Jones University, reflected any fundamental insensitivities on his part. Unfortunately, the claims made at the hearing about the diversity of Governor Ashcroft's appointments do not withstand scrutiny when compared to either his Republican predecessor in the Governor's office, Senator KIT BOND, or his successor, Governor Mel Carnahan.

At the first day of the hearing, Senator Ashcroft stated: ''I took special care to expand racial and gender diversity in Missouri's courts. I appointed more African-American judges to the bench than any governor in Missouri history, including appointing the first African-American on the Western District Court of Appeals and the first African-American woman to the St. Louis County Circuit Court.'' (1/16/01 Tr., at p. 89). He repeated these claims the next day. (1/17/01 Tr., at p. 57).

The claim of appointing more African American judges than any governor in Missouri history is deliberately deceptive. While Governor from 1985 through 1992, John Ashcroft set a record at the time with eight African American appointments to the bench,

but this is only when compared to his predecessors, who had appointed far fewer. His successor, the late Governor Mel Carnahan, appointed twenty. (St. Louis Post-Dispatch, 1/11/01).

Also, while technically correct that Governor Ashcroft appointed the first African-American on the Western District Court of Appeals, this was not the first African American appointed to the appellate court in Missouri, as might be implied. Judge Ted McMillian was appointed by Warren Hearnes more than ten years earlier to the Eastern District Court of Appeals. (See The Honorable Donald P. Lay, ''The Significant Cases of the Honorable Theodore McMillian During His Tenure on the U.S. Court of Appeals for the Eighth Circuit,'' 43 St. Louis U. L.J. 1269, 1270 (1999)). I point this out not to minimize Senator Ashcroft's appointment of minority candidates, but simply to ensure that the record is not exaggerated.

Jerry Hunter, former Missouri Labor Secretary, and Missouri Circuit Judge David Mason, both of whom had been appointed by Governor Ashcroft, testified in support of the nominee and applauded his record of appointments of African-Americans while he was Governor. Mr. Hunter was the only African-American or minority to serve in John Ashcroft's cabinet, which is made up of fifteen department directors, during his first four years. (1/18/01 Tr., at pp.179–180). In addition, although the Mound City Bar Association, which Mr. Hunter described as ''one of the oldest black bar associations in this country,'' commended Governor Ashcroft in 1991 upon his appointment to the bench of an African-American female judge, this same organization, by letter dated January 12, 2001, has made clear that ''this is not a nomination that we can support.'' (Id., at p. 180).

Senator Ashcroft as Governor of Missouri claims to have taken ''special care'' of gender diversity as well, yet his record of appointments of women to the judiciary is ''abysmal.'' (1/18/01 Tr., at p. 60). He carefully testified that he named two women to the appellate court, the first in 1988; the other to fill the same position when the first woman moved up to the Supreme Court. He does not mention that this did not happen until nearly three years after he took office and only after front-page stories in local newspapers made clear that ''Missouri lags behind most other states in the selection of women for judgeships,'' (St. Louis Post-Dispatch, October 22, 1986), and a national survey by the National Women's Political Caucus ranked Governor Ashcroft ''near the bottom among state executives in appointment of women to Cabinet-level posts. . .'' (St. Louis Post-Dispatch, October 24, 1986). By contrast, the same survey put Governors Madeleine Kunin of Vermont and Bill Clinton of Arkansas among the top ten states for the percentages of women in their cabinets. (Id.).

A study on the number of women appointed to the judiciary published in 1986 found that Missouri was one of only five states with intermediate appellate courts that had never had a female jurist above the trial court level. (Karen Tokarz, ''Women Judges and Merit Selection under the Missouri Plan,'' 4 Washington Univ. Law Quarterly, 903, 916 (1986)). This study suggests that ''the attitude of the chief executive may affect women's access to the judiciary,'' and cites as examples that the ''explicit affirmative efforts by Governor CHRISTOPHER BOND and President Jimmy Carter to recruit women applicants correlate with increased numbers of women judicial appointees during their tenures.'' (Id., at 942). By comparison, the study notes that at the time the article was written, then Governor Ashcroft had selected no women for the 19 judicial appointments he had made ''nor has Ashcroft appointed any women for the nine interim appointments.'' (Id.).

John Ashcroft's low numbers of women appointments to the judiciary were not due simply to a failure to have women's names recommended by nominating commissions. Press accounts report that women candidates appeared on panels presented to then-Governor Ashcroft, but in the incidents reported, he appointed men. (St. Louis Post-Dispatch, March 20, 1988). Moreover, as Governor, John Ashcroft did even more poorly with so-called ''interim appointments'' of judges outside the merit selection plan, where governors have free rein and are not limited by the recommendations of a selection panel. In two terms, Governor BOND had named eight women out of 77 interim appointments. Governor Ashcroft named only two women out of 51 interim appointments. (''Report on the Missouri Task Force on Gender and Justice,'' 58 Missouri Law Rev. 485, 688 n. 746 (1993)).

In short, Senator Ashcroft deserves credit for appointing women to judicial posts, but the amount of credit he should be given depends on the context. John Ashcroft named only eleven women out of 121 judicial appointments during his eight years as governor. Id. at 702, Table 1. Not only did his successor appoint nearly three times that number in the equivalent time period but this number was even surpassed by his predecessor, Governor BOND, who appointed twelve women during two terms. (58 Mo. Law Rev. at 702, Table 1).

Governor Ashcroft's testimony on the diversity of his appointments is technically accurate, but in my view was misleadingly framed to portray him as a leader on diversity. In truth, the record shows little evidence of urgency or strong advocacy for diversity. Both his actual record and the manner in which he portrayed it to the Committee are troubling.

John Ashcroft has engaged in a pattern of using inflammatory and intemperate language to question the authority and legitimacy of the United States Supreme Court and lower federal courts in a way that raises serious concern in my mind about his suitability for the job of Attorney General and whether he is the appropriate role model for the job of the Nation's chief law enforcer. Worse, while sworn to uphold the Constitution, he has backed up his words and disrespect for Supreme Court precedent by sponsoring legislation both in Missouri and in the U.S. Senate that is patently unconstitutional.

John Ashcroft has taken many opportunities to bash the federal judiciary. In several public speaking engagements he has chosen to attack the decisions of federal courts. (Speech to the Claremont Institute, Los Angeles, California, October 13, 1997, available through *www.claremont.org;* Appearance on ''Jay Sekulow Live'' Radio Show, July 24, 1998, available through *www.jaylive.com.*) The most extreme example of Senator Ashcroft's rhetorical attacks on the Supreme Court is the speech he gave in March 1997 to both the annual meeting of the Conservative Political Action Conference and to the Heritage Foundation. In ''Courting Disaster: On Judicial Despotism In the Age of Russell Clark,'' he characterized the Supreme Court's landmark abortion decisions in Roe v. Wade and Casey as ''illegitimate.'' He called the Justices who struck down an Arkansas congressional term limit law ''five ruffians in robes,'' and said that they ''stole the right of self-determination from the people.'' He asked, ''have people's lives and fortunes been relinquished to renegade judges, a robed, contemptuous intellectual elite fulfilling Patrick Henry's prophecy, that of turning the courts into, quote, 'nurser[ies] of vice and the bane of liberty?' '' He also said ''We should enlist the American people in an effort to rein in an out-of-control Court.''

The ''five ruffians in robes'' to whom Senator Ashcroft referred are members of the Rehnquist Supreme Court, which is a most conservative court—sometimes activist but decidedly conservative. I have heard Justice Anthony Kennedy and Justice Ruth Bader Ginsburg called many things but never ''ruffians.''

I find this sort of rhetoric deeply troubling. I certainly understand disagreeing with a Supreme Court decision. Lately, I have found myself strongly disagreeing with a number of decisions by the Court. I took strong exception to the Court's intervention in Bush v. Gore, but having noted my disagreement in respectful terms, I said that I accepted the Court's decision, and believed that all Americans should do the same.

When I asked Senator Ashcroft about these comments, he did not disavow them but simply noted that ''I don't think it'll appear in any briefs.'' (1/17/01 Tr., at p. 263). I should hope not. But I would also hope that a public official sworn to uphold the Constitution would not go running around denying

the legitimacy of Supreme Court decisions that, in our constitutional system, are the ultimate authority on what the Constitution means.

These comments raise serious issues about a fundamental qualification for the job of Attorney General: Senator Ashcroft's ability and readiness to discharge the obligatory oath to uphold the Constitution.

Senator Ashcroft's legislative career is not reassuring in this regard. While it is true, as Senator Ashcroft stressed, that a Senator's legislative role is different from an Attorney General's law enforcement role, both take the same oath to uphold the Constitution, so the one is not irrelevant to the other.

As a Senator, John Ashcroft displayed little reverence for the Constitution as written and as interpreted by the Supreme Court. It is, of course, the privilege of Senators to propose constitutional amendments, but in his one six-year term here, Senator Ashcroft stood out among his colleagues in his eagerness to amend the Constitution whenever its terms dictated a result he did not like. He did not like Roe v. Wade, so he sponsored a Human Life Amendment, which would have banned all abortions except where necessary to protect the life of the mother. He did not like the way the ''five ruffians in robes'' interpreted the Constitution in the Term Limits case, so he sponsored Term Limits Amendments. In total, Senator Ashcroft sponsored or supported constitutional amendments on no less than eight different topics in his six years in the Senate.

That is a distinctly un-Madisonian record. James Madison told posterity that constitutional amendments should be limited to ''certain great and extraordinary occasions.'' Madison's wise counsel, like the Constitution itself, has stood the test of time: the Constitution has only been amended 17 times in the past 200 years. But John Ashcroft disagrees with James Madison on the spirit of Article V, the Article governing the amendment process. Indeed, he even introduced a proposed amendment, supported by no other Senator, to change Article V itself. In a Dallas Morning News article dated January 17, 1995, he was quoted as saying that he wanted to ''swing wide open the door'' to let the States decide on new amendments. His proposed amendment would have done so. Even more than the other amendments he supported, Senator Ashcroft's amendment to Article V would have severely cut back on the constitutional role of Congress, by allowing bare majorities in three-quarters of the States to amend the Constitution even if a majority of Congress disagreed. This radical proposal sits in stark contrast to the claim Senator Ashcroft makes today—in his response to my written question he says that his efforts to amend the Constitution as a Senator ''reflect a fundamental respect for the Constitution and for the mechanism that that documents for altering the text.''

More troublesome is Senator Ashcroft's record of introducing unconstitutional legislation, particularly in the area of reproductive rights. In both Missouri and in the U.S. Senate, Senator Ashcroft has been an unabashed advocate of banning abortion in all circumstances, except to save the life of the mother, even though this position runs directly counter to the fundamental rights set forth in Roe v. Wade. He has also been an unabashed critic of this seminal decision, stating as recently as 1998 that, ''[c]learly, the Supreme Court, unguided by any constitutional text, has written themselves into a position that is legally, medically and morally incoherent.'' (CONGRESSIONAL RECORD, June 5, 1998, at S5697).

In 1981, when he served as Attorney General of Missouri, he testified before the Senate Judiciary Subcommittee on Separation of Powers on a bill sponsored by Senator HELMS and Representative HYDE. The bill stated ''the life of each human being begins at conception,'' and would have allowed each state to outlaw and criminalize abortion, without any exception for victims of rape or incest or even to save the life of the mother. (Hearings on S. 158 Before the Subcomm. on Separation of Powers, Senate Comm. on the Judiciary, 97th Cong. 1105–1109 (1981)). John Ashcroft made clear his view of both Roe v. Wade and the workings of the Supreme Court in his introductory remarks, stating:

> I have devoted considerable time and significant resources to defending the right of the State to limit the dangerous impacts of Roe v. Wade, a case in which a handful of men on the Supreme Court arbitrarily amended the Constitution and overturned the laws of 50 States relating to abortions. (Id.).

In a chilling reminder of stringent State anti-abortion laws in effect before Roe v. Wade, Missouri Attorney General Ashcroft reminisced that:

> We had a law which specified that aborting a child subjected a person to a manslaughter charge, but there was a clearly maintained exception for cases in which the mother's life was in danger.

True to his 1981 testimony, he was actively involved in anti-abortion efforts as Missouri's Attorney General. He defended a state statute that, among other restrictions, would have required all abortions after 12 weeks to be performed in a hospital. The Supreme Court recognized that such a requirement would effectively increase the cost of such abortions dramatically and make them all but impossible to obtain for anyone but the wealthy, and therefore ruled that this requirement was unconstitutional. *Planned Parenthood* v. *Ashcroft*, 462 U.S. 476, 482 (1983). In a brief he submitted to the U.S. Supreme Court in defense of that law, John Ashcroft argued that, in establishing the in-hospital requirement, ''Missouri has acted precisely within the parameters of Roe v. Wade.'' (Brief for the Cross-Petitioners).

While defending the constitutionality of a state law is the appropriate role of the attorney general, he has also aggressively tested the limits of Roe v. Wade as a legislator. In 1986, as Governor of Missouri, John Ashcroft signed a sweeping anti-abortion bill that stated, among other things, that ''life begins at conception.'' The Supreme Court declined to assess the constitutionality of that provision, while upholding other parts of the law. *Webster* v. *Reproductive Health Services*, 492 U.S. 490 (1989).

His legal success in *Webster* prompted Governor Ashcroft to appoint a state task force to consider additional measures the state could enact to restrict reproductive rights. Despite the complexity and volatility of this issue, he made no effort to develop a consensus but instead indicated that the group should not have ''drawn-out hearings'' and he only appointed members who shared his ardent anti-abortion views. This was a polarizing action. Indeed, legislative leaders reportedly ''declined to nominate members to the task force, saying it was going to end up stacked anyway in favor of one side of the issue.'' (St. Louis Post-Dispatch, August 9, 1989). Harriett Woods confirmed at the nomination hearing that ''the leaders of the legislature were so outraged that they said they wouldn't participate.'' (1/18/01 Tr., at p. 63). Not surprisingly, the preordained conclusions of the Task Force on Unborn Life report, issued in January 1990, were that ''the ultimate goal of legislation and policy-making in the State of Missouri should be . . . the imposing of legal restrictions to reduce the number of abortions.''

Shortly after release of that report, Governor Ashcroft announced his support for legislation, to become known as Missouri Senate bill 339, that would have criminalized abortions performed for eighteen different reasons, including ''to prevent multiple births from the same pregnancy,'' ''the failure of a method of birth control,'' and ''to prevent having a child not deemed to be wanted by the mother or father.'' No exception for rape or incest was allowed. To add to the burdens on a woman seeking an abortion, this legislation would have required a pregnant woman to file an affidavit stating the reasons for the abortion, apparently subjecting her to criminal liability for perjury if she did not fully disclose in a document to be filed with the abortion facility her most personal, confidential reasons for exercising her right to choose. Furthermore, the bill would also have allowed the spouse or father of the ''unborn child'' and the state Attorney General to intervene in court to stop the abortion. This extreme legislation failed in the state legislature because it lacked an exception for cases of rape and incest. (St. Louis Post-Dispatch, March 28, 1991).

When I consider the moral, ethical and religious dilemma that parents face when they learn that a pregnancy is multiple and that the best chance for normal, healthy births may be to have

selective fetal reduction, I shudder at proposed legislation that would make such a difficult decision a criminal one.

More disturbing is Senator Ashcroft's effort, as part of his confirmation evolution, to distance himself from this legislation. He acknowledges in response to my written questions that Missouri Senate Bill 339 might not be constitutional, but asserts that (1) he had ''no specific recollection'' of the bill; (2) ''it appears from press reports that representatives from my office may have expressed interest in seeing the bill passed out of committee''; (3) ''[w]hile I was governor, it was my policy to refrain from opining on whether I would sign a bill until after a bill actually passed the legislature'' and (4) ''this bill did not prevent abortions attributable to rape, incest or a ''bona fide, diagnosed health problem''. (Emphasis in original). Each of these assertions are belied by the public record.

First, Senator Ashcroft's failure of recollection about this legislation is difficult to credit. In his State of the State Address on January 9, 1990, he said: ''within the next week, I will announce my support for concepts that would enhance our capacity to protect unborn children.'' Shortly thereafter, on January 19, 1990, he issued a statement saying, ''Today I am proposing that Missouri ban abortions for birth control, sex selection, and racial discrimination. Missourians reject multiple, birth control abortions. . . I am grateful for these proposals and I would welcome an opportunity to sign their protections for unborn children and mothers into law as an alternative to the continuation of abortions.'' These specific reasons for banning abortion were part of Missouri Senate bill 339. Senator Ashcroft failed to provide the Committee with these speeches, but they are documented in contemporaneous press reports. (See St. Louis Post-Dispatch, January 10, 1990 and January 20, 1990).

Second, Senator Ashcroft is wrong when he says only his ''representatives . . . expressed interest.'' In addition to the speeches cited above, in which he expressly supported the terms of this legislation, when the bill was being debated in the Missouri Senate, then-Governor Ashcroft reportedly got personally involved in pressuring a swing vote. ''Gov. John Ashcroft had telephoned Singleton to urge his support for a bill barring virtually all abortions'' [referring to Senate Bill 339]. St. Louis Post-Dispatch, March 28, 1991.

Third, Senator Ashcroft is wrong when he says he refrained from opining about signing the bill. Contemporaneous press reports note that ''[t]he governor's proposal would join two bills that would outlaw most abortions in Missouri. Ashcroft said he would sign those measures into law 'as an alternative to the continuation of abortions.' '' (St. Louis Post-Dispatch, January 20, 1990).

Finally, Senator Ashcroft is wrong when he says the bill did ''not prevent abortion attributable to rape, incest''. The bill itself provides no such exceptions and, in fact, the bill failed because in the view of the ''swing vote'' ''the proposal went too far. . . it failed to assure the continued legality of abortions in cases involving rape or incest.'' (St. Louis Post-Dispatch, March 28, 1991).

We are all aware that during his time in the Senate, John Ashcroft was among the most avid of anti-abortion legislators. He has cosponsored the so-called ''Human Life Act,'' which states that ''the life of each human being begins at fertilization.'' This legislation would not only ban all abortions, but also have the effect of outlawing the most common forms of contraception, including the birth control pill and the IUD.

At the nomination hearing, I asked a panel of witnesses that included both supporters and opponents of this nomination, and was composed largely of experts on reproductive rights issues, whether anyone disagreed that the Human Life Act was patently unconstitutional on its face. No one expressed disagreement, or disputed me when I said: ''I'll take it by your answers, everybody feels it's unconstitutional.'' (1/18/01 Tr., at p. 80).

In response to my written questions, Senator Ashcroft has now conceded, as part of his confirmation evolution, that, as introduced, the Human Life Act of 1998 was ''not constitutional under *Roe* and *Casey*,'' thus acknowledging that while sworn to uphold the Constitution, he knowingly proposed unconstitutional legislation. His explanation—''I thought that [the legislation] had the potential to promote a discussion that could have led to the passage of legislation that would have been constitutional under *Roe* and *Casey*''—is inconsistent with his statement on introduction of the bill: ''I believe that our proposed Human Life Act is a legitimate exercise of Congressional power under Section Five of the Fourteenth Amendment'' (CONGRESSIONAL RECORD. 6/5/98, S5697).

There is no doubt that John Ashcroft's support for unconstitutional legislation limiting reproductive rights stems from his genuine and heart-felt antipathy for the woman's right to choose—her right to choose not only whether to be pregnant but also the form of contraceptive which works best for her. Limiting access to contraceptives is, for me, a significantly troubling aspect of John Ashcroft's record.

For example, when he testified before the Senate in 1981, opponents of the Helms-Hyde bill at issue made clear that an important consequence of a law mandating that life begins at conception would be to permit states to ban multiple forms of popular contraceptives. One expert physician explained, ''[t]his bill, if enacted into law, will prohibit the use of such commonly employed contraceptives as certain birth control pills and intrauterine devices because these forms of birth control prevent implantation into the uterus of the fertilized ovum that has, by legal decree, been made a person.'' (Hearings on S. 158 Before the Subcomm. on Separation of Powers, Senate Comm. on the Judiciary, 97th Cong., supra, at p. 51, testimony of Dr. Leon Rosenberg).

Short of federal legislation, John Ashcroft took other steps to limit access to contraceptives at the local level. In 1980, as Missouri's Attorney General, he issued a legal opinion designed to undermine the state's nursing practices law. He opined that the giving of information about and dispensing of condoms, IUDs and oral contraceptives, and other basic gynecological services by nurses constituted the criminal act of the unauthorized practice of medicine, even though these services were at the time routine health practices provided by Missouri nurses, including within the State's own county health departments. As a result, the State Board of Registration for the Healing Arts threatened certain physicians and nurses with a show cause order as to why criminal charges should not be brought against them. The attorney who represented these nurses and physicians, Frank Susman, testified at the nomination hearing that:

> Implementation of the nominee's Opinion would have eliminated the cost-effective and readily available delivery of these essential services to indigent women, who often utilize county health departments as their primary health care provider, and would have shut and bolted the door to poor women who relied upon these services as their only means to control their fertility. (1/18/01 Tr., at p. 75).

In a lawsuit designed to resolve this matter, Attorney General Ashcroft intervened to block the nurses from providing these family planning services, but a unanimous Missouri Supreme Court struck down the nominee's interpretation of the Nursing Practice Act. *Sermchief* v. *Gonzales*, 660 S.W.2d 683 (1983).

Mr. Susman testified that the nominee has ''at every opportunity . . . sought to limit access to and to require parental consent for not only abortion, but for contraception as well.'' (1/18/01 Tr., at p. 76). Indeed, in the Senate, Senator Ashcroft was the sole sponsor of legislation that would require parental consent before ''an abortifacient'' or ''contraceptive drugs or devices'' are dispensed to a minor through federally-subsidized programs. (S. 2380, in 105th Congress; S. 3102 in 106th Congress).

Set against this record, John Ashcroft's testimony that he accept[s] *Roe* and *Casey* as the settled law of the land and that he will follow the law in this area'' seems, at a minimum, implausible. (1/16/01 Tr., at p. 91).

Religious organizations perform wonderful acts of compassion and charity and play a critical role in helping those most needy in our country and in filling gaps left by government programs. Yet, our Constitution obligates us to ensure that church and state remain

separate, to protect the religious beliefs of all of our citizens from government interference, and to protect the rights of those who do not believe. This obligation means that any use of religious organizations to provide social services must be structured with extraordinary care, and that there be separation between proselytizing and charity. John Ashcroft has been a leading proponent of the most extreme ''charitable choice'' policies, under which religious organizations would not even have to avoid religious proselytizing while distributing federal benefits.

His deference to religious groups is such that, as Governor, he even opposed laws aimed at ensuring that church-run day care centers met the same basic health and safety requirements (e.g., smoke detectors and fire exits) that applied to all other day care centers because, as he put it in his response to my written questions, of ''the need to protect religious institutions from excessive entanglements with government.'' Missouri was one of a small group of States that did not apply ordinary health and safety requirements to day care centers run by religious organizations. (St. Louis Post-Dispatch, June 13, 1985). Nevertheless, John Ashcroft threatened to veto bills aiming to apply these requirements. (UPI, December 3, 1984). The extremeness of this position was demonstrated by the testimony of James Dunn, who recounted how a move to apply safety regulations to religiously-run child care centers in Texas were opposed by only three out of 600 such centers (1/19/01 Tr., at p. 73).

Senator Ashcroft has also not been forthcoming in response to straightforward questioning concerning his views of the Supreme Court's First Amendment jurisprudence. He told the Christian Coalition in 1998 that ''a robed elite have taken the wall of separation built to protect the church and made it a wall of religious oppression.'' But when I asked him in writing to specify which court decisions he was referring to, he offered no response. Similarly, I asked him about his attitude toward the Supreme Court's 1987 decision in *Edwards* v. *Aguillard*, which held that States may not forbid the teaching of evolution when ''creation science'' is not also taught. He would not say whether he agreed with the decision or not, and he would not provide any examples to support his 1997 claim that ''over the last half century, the federal courts have usurped from school boards the power to determine what a child can learn.''

John Ashcroft presents himself as a man of great certitude—we did not hear any regret from him during his testimony about his appearance at Bob Jones University, his interview with Southern Partisan magazine, or his reference to former Reagan Administration press secretary Jim Brady as the ''leading enemy'' of responsible gun owners. In his written responses to questions from members of the Committee, he bypassed further opportunities to reflect on his controversial statements and actions. He can be fairly characterized as seeing issues as sharp contests between right and wrong, and I am sure that he believes he chooses the right. But I am concerned that his certitude may make him insensitive to the actual impact of his actions on individual American families and citizens. I think in particular of the story of Pete Busalacchi, who submitted written testimony to the Judiciary Committee.

Pete Busalacchi is a Missouri man and was one of John Ashcroft's constituents. Almost 15 years ago, his teenage daughter, Chris Busalacchi, was grievously wounded in a car crash. According to Mr. Busalacchi, his daughter's doctors told him that she would remain in a persistent vegetative state for the remainder of her life. (Busalacchi testimony, p. 1). After more than three years had passed since the accident, during which time Chris Busalacchi never recovered from her injuries, Mr. Busalacchi sought to move his daughter to Minnesota. He planned to seek further medical opinions and consider removing her feeding tube if the medical consensus continued to be that she had no hope of recovery. (Id. at p. 2). Instead, the Ashcroft Administration obtained a restraining order preventing Mr. Busalacchi from removing her from the state, launching a two-year battle seeking to prevent Mr. Busalacchi from making determinations about his daughter's medical treatment. (Id.) Pete Busalacchi testified that John Ashcroft, through his administration, injected his ''political and religious views into [the Busalacchi] family's tragedy.'' (Id. at p. 1). When informed of the way Mr. Busalacchi felt and asked in writing whether his administration had shown the proper respect for the Busalacchi family in such a difficult time, John Ashcroft simply said, ''Yes.'' He made no acknowledgment that this tragedy even presented a difficult case, nor did he express compassion for the family.

President Bush announced that John Ashcroft would be his nominee for Attorney General on December 22, 2000. The choice of a controversial nominee was his alone. Despite the controversy surrounding this nomination, we proceeded expeditiously to schedule nomination hearings, as requested by then President-Elect Bush, even before we had received the formal nomination, a complete FBI background report or Senator Ashcroft's complete response to the standard Committee questionnaire.

As the Chairman of the Judiciary Committee for the three-week period from the beginning of the new 107th Congress until the Inauguration, I pledged to conduct the nomination hearing for John Ashcroft in a full, fair, and thorough manner. I believe this pledge was amply fulfilled. I conferred regularly with Senator HATCH to ensure that every single witness from whom the nominee and his supporters wished to hear were called as witnesses. I also provided a fair amount of time and opportunity for the American people, through their elected representatives, to ask the nominee about fundamental issues and the direction of federal law enforcement and constitutional policy that affect all of our lives.

At a time of political frustration and division, it is important for the Senate to listen. One of the abiding strengths of our democracy is that the American people have opportunities to participate in the political process, to be heard and to feel that their views are being taken into account. Just as when the American people vote, every vote is important and should be counted so, too, when we hold hearings we ought to do our best to take competing views into account. Being thorough, and giving a fair hearing to supporters and opponents of the nomination, is also what fairness to the nominee requires. I and others put tough questions to John Ashcroft so that he would have a fair opportunity to respond to our concerns, instead of being ambushed on the Senate floor without an opportunity to respond, as had happened to Ronnie White.

Over the last 200 years the confirmation process has evolved. The first Congress established the office of the Attorney General in 1789 but confirmations were handled by the full Senate or special committees. It was not until 1816 that the Senate established the Judiciary Committee as one of the earliest standing Committees, chaired initially by Senator Dudley Chase of Vermont. It was not until 1868 that the Senate began regularly referring nominations for Attorney General to this Committee. In the 26 years that I have been privileged to serve in the United States Senate, these confirmation hearings have become an increasingly important part of the work of the Committee.

Of the 15 cabinet nominees not to be confirmed over time, nine were rejected by the Senate after a floor vote. Of those, one was a former Senator, John Tower, in 1989. Two were nominees to serve as Attorney General. One of those rejected Attorney General nominees was Charles Warren, an ultraconservative Detroit lawyer and politician nominated by President Coolidge who was voted down by a Senate controlled by the President's own party due to concern that Warren's prior associations raised questions about his suitability to be Attorney General.

Progressive Republicans, recalling that Warren had aided the sugar trust in extending its monopolistic control over that industry believed this appointment was a further example of the President's policy of turning over government regulatory agencies to individuals sympathetic to the interest they were charged with regulating. . . . [T]he progressive Republicans combined with the

Democrats in March 1925 to defeat the nomination narrowly. Richard Allen Baker, ''Legislative Power Over Appointments and Confirmations,'' Encyclopedia of the American Legislative System, at p. 1616.

After the Senate rejected the nomination of Charles Warren, President Coolidge nominated John Sargent, a distinguished lawyer from Ludlow, Vermont, who was immediately confirmed and was the only Vermonter ever to serve as the Attorney General of the United States.

It has been more than 25 years since a Senator was nominated to be Attorney General. Senator William Saxbe of Ohio resigned his Senate seat in 1974 to pick up the reins of the Justice Department in the aftermath of Watergate, at a time that saw two prior Attorneys General indicted toward the end of the Nixon Administration. It has been more than 130 years since a President has chosen to nominate a former Senator after he lost his bid for reelection to the United States Senate to be Attorney General. It is not since President Grant nominated George Williams to be Attorney General in 1871 that we have had a former Senator nominated to this important post after being rejected by the people of his home State.

The position of Attorney General is of extraordinary importance, and the judgment and priorities of the person who serves as Attorney General affect the lives of all Americans. The Attorney General is the lawyer for all the people and the chief law enforcement officer in the country. Thus, the Attorney General not only needs the full confidence of the President, he or she needs the confidence and trust of the American people. All Americans need to feel that the Attorney General is looking out for them and protecting their rights.

The Attorney General is not just a ceremonial position, and his or her duties are not just administrative or mechanical. Rather he or she controls a budget of over $20 billion and directs the activities of more than 123,000 attorneys, investigators, Border Patrol agents, deputy marshals, correctional officers and other employees in over 2,700 Justice Department facilities around the country and in over 120 foreign cities. Specifically, the Attorney General supervises the selection and actions of the 93 United States Attorneys and their assistants and the U.S. Marshals Service and its offices in each State. The Attorney General supervises the FBI and its activities in this country and around the world, the INS, the DEA, the Bureau of Prisons and many other federal law enforcement components.

The Attorney General evaluates judicial candidates and recommends judicial nominees to the President, advises on the constitutionality of bills and laws, determines when the Federal Government will sue an individual, business or local government, decides what statutes to defend in court and what arguments to make to the Supreme Court, other federal courts and State courts on behalf of the United States Government. The Attorney General exercises broad discretion, largely unreviewed by the courts and only sparingly reviewed by Congress, over how to allocate that $20 billion budget and how to distribute billions of dollars a year in law enforcement assistance to State and local government, and coordinates task forces on important law enforcement priorities. The Attorney General must also set those priorities, and make tough decisions about which cases to compromise or settle. A willingness to settle appropriate cases once the public interest has been served rather than pursue endless, divisive, and expensive appeals, as John Ashcroft did in the Missouri desegregation cases, is a critical qualification for the job.

There is no appointed position within the Federal Government that can affect more lives in more ways than the Attorney General, and no position in the cabinet more vulnerable to politicization by one who puts ideology and politics above the law. We all have a stake in who serves in this uniquely powerful position and how that power is exercised.

We all look to the Attorney General to ensure even-handed law enforcement; equal justice for all; protection of our basic constitutional rights to privacy, including a woman's right to choose, to free speech, to freedom from government oppression; and to safeguard our marketplace from predatory and monopolistic activities, and safeguard our air, water and environment.

As I said at the confirmation hearings for Edwin Meese to be Attorney General, ''[w]hile the Supreme Court has the last word on what our laws mean, the Attorney General has often more importantly the first word.''

In addition, the Attorney General has come to personify fairness and justice to people all across the United States. Over the past 50 years, Attorneys General like William Rogers and Robert Kennedy helped lead the effort against racial discrimination and the fight for equal opportunity. The Attorney General has historically been called upon to lead the Nation in critical civil rights issues, to unite the Nation in the pursuit of justice, and to heal divisions in our society. America needs an Attorney General who will fight for equal justice for all and win the confidence of all the people, not one with a record of missed opportunities to bring people together.

I do not have the necessary confidence that John Ashcroft can carry on this great tradition and fulfill this important role. Therefore, I cannot support his nomination.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. VOINOVICH. 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. VOINOVICH. Mr. President, I ask unanimous consent I be permitted to speak in morning business for up to 15 minutes.

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

SOUTHEASTERN EUROPE, THE MIDDLE EAST AND OUR FLAWED ENERGY POLICY

Mr. VOINOVICH. Mr. President, several weeks ago, Senator SPECTER and I had the unique privilege to represent our nation and this body during a visit to Germany, the Federal Republic of Yugoslavia, Bosnia, Egypt and Israel.

While in these nations, we were able to meet with a number of government and non-governmental leaders who familiarized us with the current situation in southeastern Europe and the Middle East.

I found our discussions with these leaders to be extraordinarily educational and highly productive, and their insight helped us assess the broad spectrum of issues that shapes both of these volatile regions of our globe.

Our first stop was in Munich, Germany where Senator SPECTER and I spoke with members of the U.S. Embassy about trade, security and foreign policy issues facing the United States and Germany.

We also met with a number of leaders of the Munich business community to talk about trade issues affecting the United States and the European Union, (EU). Specifically, we discussed steel, bananas, and genetically-modified beef—all issues currently dominating our trade relations.

We further spoke about the deployment of the National Missile Defense system, our commitment to the ABM Treaty and the concern in the U.S. that the Europeans are moving away from their commitments to NATO.

Our second stop was in Belgrade, Yugoslavia. It was my first trip to Yugoslavia in many years; since before Milosevic came to power. I had been asked to go many times—even by the Patriarch himself—but I said that I would not go until Milosevic was no longer in power. I had taken the same view with regards to Croatia; I would not go there until Tudjman was gone.

The fact that in the last year I've visited both Croatia and Yugoslavia says that a lot about the change that has happened.

And I am proud of the fact that I was the first member of the House or Senate to visit Croatia's new president, Stipe Mesic, and that Senator SPECTER and I were the first U.S. elected officials to fly into Yugoslavia and congratulate President Kostunica.

I think it's important for the American people to know that our efforts in southeastern Europe are paying dividends for the cause of democracy, the