

Anyone who implies that is flat out wrong. If John Ashcroft is guilty of segregation because he defended the State, then why is Jay Nixon, who is the attorney general, himself, not guilty of the same thing? Why is it that two prominent Members of this body—I will introduce this into the RECORD—Senator KENNEDY and Senator HARKIN—invite you to a breakfast “to meet and support Missouri Senate candidate, Attorney General Jay Nixon, Tuesday, March 31, 1998, at The Monocle for a contribution of \$5,000 or finish your max-out?” He did the same thing as Ashcroft did. And it is hypocrisy to stand here and say this to destroy the reputation of one of the finest people who ever served here.

Mr. President, I ask unanimous consent that this announcement be printed in the RECORD.

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

**SENATOR TED KENNEDY &  
SENATOR TOM HARKIN**

INTITE YOU FOR BREAKFAST TO MEET AND  
SUPPORT

MISSOURI SENATE CANDIDATE  
ATTORNEY GENERAL JAY NIXON

TUESDAY, MARCH 31, 1998  
THE MONOCLE  
8:30 AM-9:30 AM

RSVP to Jill Gimmel—202-546-9494  
or Don Erback—202-546-9292

Contribution: \$5,000 or Finish Your Max-Out

Mr. SMITH of New Hampshire. Kay James said it about as well as you can say it. “Religious profiling,” that is what it is. You can’t be a man of faith or a woman of faith. You can’t be that. You can’t have views that differ with the left. Otherwise, you can’t serve. That is it.

Bipartisanship? I will tell you how far it reaches when we agree with that. That is when we get bipartisanship. They never come over to agree with us. That is what this debate is about. It is about the continuation of the election. The election is over. Hello, the election is over, folks.

The President of the United States should pick his Cabinet. That is the right thing to do, and every one of you knows it. To get into this character assassination of racism, anti-Catholic, antigay, anti-this, anti-that—there is not a shred of evidence about John Ashcroft that would indicate that, and you ought to examine your conscience before you vote.

John Ashcroft is well qualified to be Attorney General, maybe one of the most qualified ever to even be put up for nomination.

During the debate on Janet Reno, I recall her views against the death penalty. I happen to support the death penalty. I voted for Reno because Reno said she would enforce the law, and if the law of the land is the death penalty, she said she would enforce it. That is fine.

Do I agree with everything Janet Reno did? No. Bill Clinton won the

Presidency and had the right to pick his Attorney General. That is the situation right now. George Bush is the President, and he has the right to pick. If you think John Ashcroft is not going to enforce the law, then say so. If you think he is a racist, say so. But there is not one shred of evidence that indicates otherwise.

This business about Ronnie White is so outrageous that it really just defies logic to talk about it.

The National Sheriffs’ Association wrote a letter, and I ask unanimous consent that the letter be printed in the RECORD.

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

NATIONAL SHERIFFS’ ASSOCIATION,  
Alexandria, VA, January 11, 2001.

Hon. BOB SMITH,  
Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR SMITH: On behalf of the National Sheriffs’ Association (NSA), I am writing to offer our strong support for the nomination of Attorney General Designate John Ashcroft. As the voice of elected law enforcement, we are proud to lend our support to his nomination and look forward to his confirmation by the Senate.

As you know, NSA is a non-profit professional association located in Alexandria, Virginia. NSA represents nearly 3,100 elected sheriffs across the Nation and has more than 20,000 members including deputy sheriffs, other law enforcement professionals, students and others.

NSA has been a long time supporter of John Ashcroft and in 1996, he received our prestigious President’s Award. After reviewing Senator Ashcroft’s record of service, as it relates to law enforcement, we have determined that he will make an outstanding Attorney General and he is eminently qualified to lead the Department of Justice. NSA feels that Senator Ashcroft will be an outstanding Attorney General for law enforcement and the U.S. Senate should confirm him.

I look forward to working with you to ensure that the U.S. Senate confirms Attorney General Designate Ashcroft.

Sincerely,  
JERRY “PEANUTS” GAINS,  
President.

Mr. SMITH of New Hampshire. The National Sheriffs’ Association wrote a letter on behalf of John Ashcroft for Attorney General.

On this business about Ronnie White, the truth of the matter is the individual accused of that crime, Mr. Johnson, went on a 24-hour crime spree, killed three sheriffs, killing the wife of another one at a party during the Christmas holidays, and he was given all kinds of legal defenses. Ronnie White argued that Johnson’s defense team, a group of three private attorneys with extensive trial experience, had provided ineffective assistance. Fine; he has a right to do that. Ronnie White was a judge. He had a right to say this guy deserves some more help. But he also has to expect that if you make those kinds of decisions, somebody may hold that against you when you go up for another judgeship somewhere.

That is all it was. That is what that was about. It wasn’t about racism; it

was about a judge who some of us thought—55 of us, as a matter of fact—thought shouldn’t be on the court because of his views on crime.

I urge my colleagues to rethink their positions and understand it is important that we understand that a President should pick his nominee and that this nominee is a fine man—one of the finest who ever served here. He should be confirmed, and I hope he will be confirmed, as the next Attorney General.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you very much.

Mr. President, as we consider the nomination of John Ashcroft for Attorney General, I would like to compliment the Judiciary Committee on their process and deliberation in bringing this nomination to the floor.

On my side of the aisle, I would like to be particularly complimentary of the leadership provided by Senator PATRICK LEAHY and, of course, the work done by Senator ORRIN HATCH. I believe the deliberations were fair, rigorous, thorough, and conducted in a tone that was really becoming of the U.S. Senate. I would like to congratulate my colleagues on that.

As I consider the nomination of all the Cabinet members, particularly this one, I want to speak first about the statement that said a President is entitled to his nominees. The nominations to head up the executive branch are not entitlement programs. There is nothing entitlement about it. In fact, we were given a constitutional mandate to examine each and every nominee and to give our advice and consent to the President of the United States. The founding fathers were very clear that the Senate should not be a rubber stamp in terms of a Presidential set of nominees. The President is entitled to fair consideration of those nominees, but not for us to be a rubber stamp.

On each and every one of those nominees, I have given my independent judgment and have voted for most of President Bush’s nominations because I think they meet three tests: Competency, integrity, and a commitment to the mission of the agency.

President Bush in his inaugural address pledged to “work to build a single nation of justice and opportunity.” Yet one of his first acts was to choose John Ashcroft to lead the Department of Justice, someone who has had an extreme ideological agenda on civil rights, on a woman’s right to choose, on gun control, his positions are far outside the mainstream. Often, his rhetoric has been harsh and wounding. As attorney general and Governor of Missouri; he pushed systematically and regularly for the disempowerment of people of color and the disempowerment of women to have access to health services related to their own reproduction.

Can anyone be surprised that this nomination is divisive? This is not a time in our history for further division.

My wonderful colleague from New Hampshire left the floor. I want to say something. I don't have a litmus test on nominations. I don't have a single issue by which I judge any and of all the nominees. He raised the issue, and appropriately, that if you are not pro-choice, can you be confirmed in the Senate, or can you get Democratic votes? The answer is yes, and right here.

I will give you an example. Governor Thompson has now been appointed our Secretary of HHS. I am pro-choice. Governor Thompson is not. I did not hesitate to vote for Governor Thompson because I looked at the pattern of the way he governed. He is a champion of welfare rights and truly a compassionate conservative—one of the first to have a State version of a woman's health agenda, a real commitment to dealing with the tragedy of long-term care and extra support to care givers. This is a Cabinet member I want to work with in constructive dialog.

I had no litmus test. I don't believe my colleagues do. I believe among our own side of the aisle there are people about which it is not whether you are pro-choice or pro-life, it is, are you committed to some of the central values of our society?

Do you believe America is a mosaic, that all people come with different heritages and different beliefs and have a right to equal opportunity and justice under the law? Do you believe the social glue is access to courts that you believe are fundamentally fair. Do you believe that an Attorney General's Office at the State or Federal level will embrace the fundamental principles of our U.S. Government? That is our criteria.

When I looked at the nomination of John Ashcroft, I had to say, Is he competent? Yes. You can't dispute that. His whole education and record—yes, he is competent. On integrity? Until the confirmation hearing, I believed him to be a man of great integrity. I had no doubt. But all of a sudden, there were two John Ashcrofts. The pre-hearing John Ashcroft who was Attorney General, as Governor of Missouri, here on the Senate floor had one set of beliefs. I respect those beliefs. People are entitled to their beliefs. But all of a sudden in the confirmation hearing, his beliefs no longer mattered to him. If you fundamentally opposed, as he did, issues of civil rights, the access of women to have reproductive services, how is it you could have such passionate beliefs one day and then say they didn't matter, you would put them on the shelf?

I respect the passion Senator Ashcroft has of his beliefs. Though he is entitled to his beliefs, I don't believe his beliefs entitle him to be Attorney General of the United States. I don't know how you can believe something so passionately one day and then say you will put them on the shelf. Beliefs are not something like the surplus that you can put in a lockbox. Beliefs cannot be put in a lockbox.

When I looked at John Ashcroft and his record as attorney general and as Governor, I was deeply troubled. What I was troubled about was how he enforced issues, his record on civil rights, on a woman's right to choose, on enforcing the laws.

On civil rights, the Attorney General of the United States decides how vigorously we enforce existing civil rights laws. The Civil Rights Division monitors and ensures that school districts comply with desegregation. Yet as attorney general, John Ashcroft strenuously opposed a voluntary court-ordered desegregation plan agreed to by all parties. He even tried to block this after a Federal court found that the State was acting unconstitutionally and then went on to vilify the court for their position.

One of the fundamental civil rights is the right to vote. Didn't we just go through that in the most closely contested election? Every vote does count, and everybody who can should be registered. Yet as Governor, he vetoed the Voter Registration Reform Act which would have significantly increased minority voter registration and was endorsed by such groups as the League of Women Voters. I believe there has been a persistent pattern of opposing opportunity in the areas of civil rights.

On the protection of rights of individuals, the right to choose, the Attorney General has great power to undermine existing laws and the constitutional protection of a woman's right to choose. As attorney general, John Ashcroft used his office to limit women's access to health care, particularly reproductive health care, filing an amicus brief in a case that sought to prevent nurses from providing routine GYN services and also giving out on a voluntary basis usual and customary methods of contraceptives, saying they were practicing medicine. What they were doing was practicing public health.

Based on his record and other statements, I can only conclude that John Ashcroft would use his position to undermine existing laws, including the constitutional protection of a woman's right to choose and access to reproductive health services, after these services have already been affirmed by law and the Supreme Court.

Sexual orientation. The Attorney General is charged with enforcing anti-discrimination laws, which include protections for homosexuals. Yet John Ashcroft opposed the nomination of James Hormel to be Ambassador to Luxemburg simply because he is gay. Now, hello, what does that mean would happen in his own department? Will this be an issue with his own hiring at the Department of Justice?

The Justice Department advises the President on proposed legislation; for example, hate crimes prevention, another part of the social glue of America. John Ashcroft voted against this legislation. How does he feel about hate crimes now? Will he enforce exist-

ing hate crime laws? Will he recommend that the President expand them?

The Justice Department is called upon to enforce other laws. One of the big flashing yellow lights is racial profiling. By the way, the former Governor of New Jersey was called into question about the way she enforced racial profiling, but I voted for her to be EPA Administrator because that is not the issue in being an EPA Administrator. Again, no litmus test and no listening to the so-called left-wing groups they talk about. Please let's end this demeaning of groups.

The NAACP, People for the American Way, the ACLU, these are part of America. Senator Ashcroft could have acted in racial profiling, but he held it up in committee. He was quite passive. Is he going to be passive when it comes to this as Attorney General? I wonder.

Then we have activism. Bill Lann Lee was nominated for the Assistant Secretary for Civil Rights—a compelling story, a man of great talent, a man who worked his way up, not unlike some of the nominees given to us by President Bush, such as Mr. Martinez, Ms. Chao, whose stories are compelling. Bill Lann Lee had a compelling story, but he also had one other thing on his resume. He happened to have been a civil rights lawyer for the NAACP. This made him, in the Ashcroft analysis, a radical activist. What is wrong with being a lawyer for the NAACP? I thought Thurgood Marshall once had that job—not a bad place to earn your spurs. But, oh, no.

So what is it that John Ashcroft is going to look for in his Assistant Secretary for Civil Rights? Passivity? Let's get somebody passive? I don't think so, because it really goes against what we require in that job, because in that job you have to be proactive.

I don't believe John Ashcroft is a racist. I also don't believe he is anti-Catholic. I believe those rhetorical charges were not only exaggerated but I truly believe they are unfounded. At the same time, he does have a record of insensitivity. I look at that pattern where he routinely blocked the nomination of women and minorities; he opposed 12 judicial nominees, 8 of whom were women and minorities.

Others have spoken about his position on gun control. As a fervent opponent of even the most basic gun control measures, how can we expect him to vigorously enforce the gun safety laws that are already on the books?

Let me conclude. The President does have the right to name his Cabinet, but the Senate has the constitutional requirement to give advice and consent on these nominations. My advice to President Bush is: I am sorry you gave us such a divisive nominee. Other nominees are excellent. Others I will look forward to working with, and to starting a constructive dialog with. I am so sorry this happened. I am sorry it happened to John Ashcroft. If John Ashcroft had been nominated for Secretary of Agriculture, I would have

probably voted for him. But I cannot vote for him to be Attorney General because I do believe that beliefs matter and the beliefs that you show over a record of a lifetime show the true way you will conduct your office. Beliefs are not in a lockbox.

I cannot consent to the nomination of John Ashcroft. I urge my colleagues to join me in opposing this nomination. I also urge my colleagues, let us not have demeaning rhetoric on the floor or try to demonize either a group or a nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am prepared to speak at this moment. If there is a Republican Senator on the floor, I will be happy to yield time so we take turns.

Mr. HATCH. If the Senator will wait, I understand Senator KAY BAILEY HUTCHISON is coming over. Here she is now. I appreciate that courtesy.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the Judiciary Committee for having this nomination go forward and for giving us the opportunity to talk. I think the debate is very important. I think it is important that we talk about the John Ashcroft we know because when I hear some of the other people talking about John Ashcroft, it is not the same person with whom I served for 6 years. I would like to set the record straight on a couple of points.

I have known John and Janet Ashcroft since long before they came to the Senate because he was a leader for his State and our country for many years before he represented his State in the Senate. He has been a Governor. He has been elected chairman of the National Governors' Association. He has been the attorney general for the State of Missouri. And he served as chairman of the Attorneys General Association of the United States. So he has been in a position of leadership for our country many times.

I think he is the most qualified person to have been nominated for Attorney General in many years. He has served in the capacity of attorney general as well as Governor and in the U.S. Senate.

The people of America saw the true heart of John Ashcroft when his opponent, Mel Carnahan, died near the end of their race for the Senate. I was there for John Ashcroft after that tragic accident. I think John Ashcroft did not know what to do, just like everyone else. He had no intention of campaigning against a man who had just died, a man who had also served the State of Missouri so well. He had no intention of campaigning against his widow when she made the decision that she would take the appointment of the Governor if Mr. Carnahan won the election.

John Ashcroft kept his word. He kept his word and has never uttered a word

about Mrs. CARNAHAN. So I think when he was ultimately defeated, his magnanimity in defeat also showed that he is a person of character first—character above public servant, character above partisan, character above everything else. He showed it at a time when he had nothing to gain, when he thought he probably would not be in public office again. But he did what was right from his heart. That is why I am supporting him for Attorney General of the United States.

He also brings an impressive academic background to this office. He is a graduate of the University of Chicago School of Law. He attended Yale University.

I also want to mention, because I think she is very much a part of this team, his wife Janet and their joint commitment to education in our country. When she moved up here with Senator Ashcroft, she decided she wanted to teach. She chose to teach at Howard University, one of our Nation's historically black colleges. Howard University is where she has taught for 5 years. I think she has shown her commitment to education by going the extra mile to share her experiences and her knowledge with the students at Howard University. Janet, by the way, is also a lawyer.

I am very proud to support both Janet and John Ashcroft.

We have heard a lot of John Ashcroft's record, things which he said which have also been refuted. In my experience with John Ashcroft, he was the cosponsor of my legislation to eliminate the marriage tax penalty, which has the effect of taxing so many couples just because they get married—not because they make higher salaries individually but because they get married—and throwing them into a higher bracket. John did not just cosponsor the bill and walk away; he fought with me on the floor, day after day, week after week. We passed marriage penalty relief. It was because John Ashcroft worked as hard as I did to make that happen. It was vetoed by the President. But eventually we are going to pass marriage penalty relief in this country, and the President is going to sign it, and people will not have to pay the average \$1,400 a year just because of their married status.

John did this because he believes in family values and he believes marriage is one of the ways people can live a good life. Statistics show that married people are the least likely to be on welfare or to get into any kind of criminal trouble. I think we should be encouraging marriage, not discouraging it. John Ashcroft agrees with that.

He worked with me on reauthorizing the Violence Against Women Act. We introduced legislation to amend current stalking laws to make it a crime to stalk someone across State lines. Also, cyberstalking has become a more common crime in recent years, as the use of the Internet has increased. Young people are lured into a situation

in which criminal conduct becomes part of an association. That happens when you have Internet chatrooms. Internet chatrooms often cause people to start thinking they want to meet, and that has facilitated criminal acts when it has not been monitored correctly. So to try to discourage it, we made that against the law.

John also played a role in allowing hourly wage workers, particularly working mothers, to have flextime in the workplace so they could take off at 3 o'clock on Friday afternoon and make up for it on Monday by working 2 extra hours so they could see their child's football game or soccer game.

These are things that are very important in John's background.

He also voted to prohibit anyone convicted of domestic violence from owning a firearm. This is very important to try to curb domestic violence in our country.

I think we need to bring John's full record to the forefront in order to make the decision on whether he would be fit to serve as Attorney General.

Almost everyone in this body supported every Clinton appointee to the Cabinet. That has been the tradition in the Senate. Very few times do we deny the right of the President to have his own Cabinet and the people he trusts and wants to work with around him. I think it would be a major step in the wrong direction to not affirm the appointment of John Ashcroft. I also think it will be a major setback if John Ashcroft is the victim of scurrilous statements that will keep him from having the ability to do his job and the mantle to do his job.

So I hope my colleagues will show discretion. I hope they will understand that John Ashcroft is likely to be confirmed. So if they have something to say against him, it is their absolute right to do it, but I hope they stick to the facts and give their views in a way that will not hurt John Ashcroft's ability to do the important job of enforcing the laws of this country.

When John Ashcroft becomes Attorney General, he will no longer be an advocate for laws; he will be the enforcer of laws. He has said on many occasions that he will enforce those laws to the letter because he sees that as his job.

Furthermore, he has shown by his record as attorney general of Missouri that he will do that. He deserves not only our support now but also our support after he gets the job to make sure the laws of our country are fairly and reasonably enforced and targeted to people who break those laws.

The rhetoric, if it gets too hot, is going to auger against his ability to do the job that all of us need for him to do and want him to do.

I thank the Chair. I thank Senator HATCH and Senator DURBIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Chair. Mr. President, I thank the Senator from

Texas for her kind words. I will be happy to yield to the chairman of the committee, Senator HATCH, so we can continue this dialog about this important nomination.

While in my office, I listened to one of my colleagues on the Republican side earlier in the debate raise the question whether the opposition to John Ashcroft was really based on his religious belief. I think that is an extraordinarily serious charge to make.

I am a member of the Senate Judiciary Committee. Together with my staff, we have worked for the last several weeks analyzing the public record and public career of John Ashcroft. I am aware of his religious affiliation because he made a point of stating with pride his religious affiliation during the course of the hearing. I can tell you quite candidly that I do not know a single precept or tenet of his religious faith, nor did I take the time to ask. That is totally irrelevant. In fact, if someone tried to raise that during the course of this debate, I would be the first to defend John Ashcroft's right to practice the religion of his conscience.

I do not know anything about his religion, nor have I based any of my decisions on his nomination on that fact. As I said during the course of the hearing, he has said—and it has been a matter of some amusement—that he does not drink or dance. But I will tell you I do not know whether Janet Reno drinks or dances, nor do I think it is important to the job of Attorney General.

During the course of the hearings, the Republicans brought forward a lady by the name of Kay Coles James who works for the Heritage Foundation. After her testimony, I had a conversation with her on two different occasions. At the end of the second conversation, she said: You and I agree on a lot more than we disagree when it comes to religion in public life. I liked her.

She said something in her testimony on this same issue that caused me great concern. At one point she said John Ashcroft was a victim of "religious profiling." That was her term. It is not in her written statement, but it is what she said before the Senate Judiciary Committee.

In her written statement and repeated at the hearing, she said:

Unfortunately that faith Senator Ashcroft's faith—has been dragged into the public debate and has been used to call into question his fitness for public service. Senator Ashcroft's opponents have veered perilously close to implying that a person of strong religious beliefs cannot be trusted with this office.

As a result of that statement in the hearing, I called Ms. James over afterwards and said: I am going to ask you very specifically tomorrow to name the Senators who have crossed this line and raised questions about John Ashcroft's religious belief. I did not have time the second day when the panel returned. I sent a letter to her in writing.

On January 23, Ms. James replied to my letter. This is basically what she said:

On Thursday, I testified that "several members of the Senate have questioned whether or not a man of strong personal faith and conviction can set aside his personal beliefs and serve as the Attorney General for all citizens." You ask me to identify these several senators. As I told you after the hearing, this summary came directly from Senator Ashcroft's testimony on January 16th.

And then she relates the transcript of the session which reads as follows:

Senator LEAHY asked of Senator Ashcroft:

Have you heard any senator, Republican or Democrat, suggest that there should be a religious test on your confirmation?

John Ashcroft:

No Senator has said "I will test you." But a number of senators have said, "Will your religion keep you from being able to perform your duties in office?"

Senator LEAHY went on to say:

All right, well, I'm amazed at that.

And that was the end of the transcript.

Ms. James goes on to say:

As we further discussed, I think when you put it into the context of substituting another qualifier for "religion" that the offensiveness of such thinking is apparent. I find this as troubling as asking whether being a "woman" or being an "African-American" would prevent someone from doing a job.

I believe that is a fair characterization of her reply. We still do not know the name of any Senator who raised either personally or privately to Senator Ashcroft or certainly publicly any question about his fitness for office based on his religious belief. I do not know the religions of any of the nominees to President Bush's Cabinet, nor do I think it is an important question.

What we have focused on during the course of this investigation of John Ashcroft is his public career, his public record. There have been those who always want to say: What about his private life? His private life should be private. It is his life and his family's life. I have resisted any efforts by critics of John Ashcroft to even follow that line of questioning. It is irrelevant, unimportant.

What is important is what he has stood for publicly, what it tells us about his view of politics and policy and the kind of job he would do if he is confirmed as Attorney General.

I considered John Ashcroft and his public record and my dealings with him as a fellow Senator over 4 years, and I came to the conclusion that I cannot support his nomination as Attorney General.

I listened to his testimony before the committee, and I heard him say so frequently that public positions on issues which he had held for his adult life would, frankly, not encumber him as Attorney General. I cannot really base my vote on John Ashcroft on what he has claimed he will do in the future when his public record is so clear and in many ways so inconsistent with what he said to the committee.

I say to those who raise the question about whether the Judiciary Committee or any committee is being fair to President Bush by having a thorough investigation of John Ashcroft or any other nominee, I think the agenda for considering these nominees is not the creation of any Senator, nor certainly of the Democratic side in the Senate. It is the creation of the Founding Fathers in article II, section 2, of the Constitution where they gave to the Senate the power to advise and consent to the President's nominees.

The critics of this process ignore our sworn responsibility to defend the Constitution. Alexander Hamilton, writing in *Federalist Paper No. 76* on "The Appointing Power of the Executive" wrote this of the advice and consent provision which brings us to the floor today:

It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union. . . .

Please forgive Alexander Hamilton for just referring to men, but that was the style of the day. I would certainly expand on Alexander Hamilton's sentiment to include women, but otherwise I agree wholeheartedly. There was and is enormous wisdom in the constitutional provision to provide to the legislative branch, in this case the Senate, the ability to exercise oversight of the nominations made by the President.

The Founding Fathers believed, and I think they were right, that the power to appoint people to high office in the United States should not be vested in the hands of a single individual.

The President deserves clear and broad latitude in making the appointments of his choice, but just as clearly, the Senate has a responsibility to ensure that these appointments will serve expertly, broadly, and fairly in a manner that will benefit all Americans, and the Senate has the power to, if necessary, reject the nomination.

My colleague, Senator FEINGOLD, in his statement yesterday before the committee, noted that this is a rare situation when the Senate rejects a nomination, but I will tell you, during the course of our Nation's history, there have been literally hundreds of names withdrawn when it was clear they would not pass with approval before the Senate.

Alexander Hamilton thought such rejections would occur rarely and only when there were "special and strong reasons for the refusal." I believe we have before us one of those rare instances that Hamilton foresaw. There exists today just such "special and strong reasons" to reject the nomination of John Ashcroft to the position of Attorney General. I would like to outline my reasons that necessitated my vote against his nomination.

During his testimony, Senator Ashcroft did a masterful job of painting a portrait of his vision of the job of Attorney General. He described himself as a man who would evenhandedly enforce and defend the laws of the land no

matter how strong his personal disagreement with those laws, but his public career paints a much different picture.

When I look at the public record of John Ashcroft and compare it, point by point, with his testimony, I find I am looking at two completely different portrayals, two completely different people. During the hearings, Senator Ashcroft promised fairness in setting the agenda for the Department of Justice and vowed to protect vulnerable people whose causes he has seldom, if ever, championed in his public life.

Which picture tells the story? If John Ashcroft were to become Attorney General, would it be John Ashcroft, the defender of a woman's constitutional right to choose, or John Ashcroft, passionate opponent of *Roe v. Wade*? John Ashcroft, the defender of sensible gun safety laws, or John Ashcroft, who opposed every significant gun safety measure that came before the Senate during his tenure? John Ashcroft, as defender of civil rights, or John Ashcroft, who, as Governor of Missouri, opposed a voluntary—I repeat, voluntary—school desegregation plan and efforts to register minorities to vote.

We all heard Senator Ashcroft's testimony, but his public record speaks with clarity and consistency.

Let us consider the question of discrimination against a person because of their sexual orientation. Consider whether those with a different sexual orientation who were victims of a hate crime could expect the protection of John Ashcroft's Department of Justice.

I cannot speak for all of America—maybe only a small part of it—but I think, regardless of your view towards sexual orientation, the vast majority of Americans oppose discrimination against anyone because of their sexual orientation. The vast majority of Americans think it is fundamentally unfair to be intolerant of people with a different sexual persuasion.

Recently at Georgetown University, Professor Paul Offner stated that in a 1985 job interview, then-Governor Ashcroft asked him pointblank about his sexual orientation. Mr. Offner related that the Governor asked him: "Do you have the same sexual preference as most men?" Senator Ashcroft, through his spokespeople, has denied this. In fact, they brought witnesses to say that it did not happen.

Perhaps the story would be nothing more than the typical Washington version of "yes, you did; and, no, I didn't," were it not for the matter of Senator Ashcroft's troubling record on the issue of tolerance for people of different sexual orientations.

Senator Ashcroft opposed the nomination of James Hormel as Ambassador to Luxembourg because Mr. Hormel, in Senator Ashcroft's words, "... 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."

For the record, Mr. Hormel's lifestyle is that he is an openly gay man.

I know the appointment of any Ambassador is important. Certainly, the appointment to a nation such as Luxembourg, which has been a friend of the United States for a long time, is important. But to single out James Hormel because he is an openly gay man, and to oppose his nomination because of that, I think, is not fair.

Senator Ashcroft said he opposed Mr. Hormel's nomination based on the "totality of the record." When he was asked by Senator LEAHY if he opposed Mr. Hormel because he was gay, Senator Ashcroft denied that. He said: "I did not."

Senator Ashcroft had very little contact with Mr. Hormel before his nomination. He refused to meet with Mr. Hormel after he was nominated despite Mr. Hormel's request.

At a recent press conference, Mr. Hormel had this to say. I will quote him:

I can only conclude that Mr. Ashcroft chose to vote against me solely because I am a gay man.

He had concluded that his sexual orientation was the cause of Senator Ashcroft's opposition "not only from his refusal to raise any specific objection to my nomination, but also from Mr. Ashcroft's public comments at the time of my nomination and his own long record of resistance to acknowledging the rights of all citizens, regardless of their sexual orientation."

I have before me a letter dated December 3, 1997, from James Hormel, of San Francisco, CA, to Senator Ashcroft at the Hart Senate Office Building. He wrote:

I am aware that you voted against my nomination, when it was considered by the Foreign Relations Committee, and understand that you may have concerns about my qualifications. I want you to know that I am available to meet with you at your convenience in either Washington or Missouri, to address and—I trust—allay your concerns.

Senator Ashcroft never agreed to such a meeting.

Could we expect Attorney General Ashcroft to defend tomorrow's Matthew Shepard if he can't show tolerance for today's James Hormel?

The second issue that is of importance to me relates to an outstanding individual who came before the Senate Judiciary Committee when I served on that committee 2 years ago. His name was Bill Lann Lee. He was being considered as an Assistant Attorney General for Civil Rights. Senator Ashcroft joined in an effort to block his nomination.

I remember this because I remember what Bill Lann Lee told about his life's story. Maybe I am particularly vulnerable when I hear these stories, but they mean so much to me, when a person such as Bill Lann Lee comes and tells us about the fact that his mother and father were immigrants from China to the United States. They came to New York City and started a small laundry,

and raised several children, including Bill Lann Lee.

His mother is with him. His father passed away. He said his mother used to sit in the window of the laundry every day at her sewing machine. His father was busy in the back ironing and preparing the laundry. Bill Lann Lee said that they worked every day—hard-working people—raising a family. When World War II broke out, Bill Lann Lee's father was old enough to escape or avoid the draft, but he volunteered because he was proud of this country and he was willing to serve.

Bill Lann Lee also told us that his father refused to ever teach him how to run the laundry. He told him, from the beginning: This is not your life. You will have a different life. We will work hard here. You are going to do something different. And, boy, was he right, because Bill Lann Lee applied for a scholarship to one of the Ivy League schools. He received a scholarship and went on and graduated from law school.

He then went to work for the NAACP. He really dedicated his professional life not to making money as a lawyer but to fighting for tolerance against discrimination.

He was a quiet man, a humble man; but when it came to the cause of civil rights, he clearly believed in it. For that reason, he faced withering criticism from the Senate Judiciary Committee. In fact, Senator Ashcroft openly opposed his nomination.

When Bill Lann Lee was asked about a specific Supreme Court case, and whether he would enforce it, Bill Lann Lee, under oath, said: Yes, I will enforce it. Senator Ashcroft rejected that sworn statement. He said, in opposing Bill Lann Lee, that Bill Lann Lee was an "advocate" and was "willing to pursue an objective . . . with the kind of intensity that belongs to advocacy, but not with the kind of balance that belongs to administration."

Obviously, Senator Ashcroft felt that advocacy and effective administration do not mix. "He has obviously incredibly strong capacities to be an advocate," Ashcroft said of Bill Lann Lee. "But I think his pursuit of specific objectives that are important to him limit his capacity to have a balanced view of making judgments that will be necessary for the person who runs that division."

I was saddened by the treatment of Bill Lann Lee by the Senate Judiciary Committee and Senator Ashcroft. This good man—this great American story—was subjected to what I considered an unfair standard by the man who now wants to be our Attorney General, who now wants to be entrusted with enforcement of civil rights laws.

But this was not the only nominee that Senator Ashcroft zeroed in on; another was Judge Margaret Morrow of California. He joined in blocking her nomination for a lengthy period of time with a little Senate device known as a "secret hold," where you hold up a

nominee and you never disclose that you are the person holding it. Eventually, he admitted he was the person holding Margaret Morrow back from her appointment to the Federal bench.

Was Margaret Morrow qualified to be a Federal district court judge? Witness after witness said she was. They all said she had extraordinary qualifications. She was the first woman to be president of the California State Bar Association. But she didn't meet Mr. Ashcroft's test. Because of that, she waited years before this Senate before she had a chance to serve in the State of California.

The reason why Senator Ashcroft opposed her? She was an advocate in his mind. Should I accept that John Ashcroft, himself, an impassioned advocate for his entire political life, will surrender his advocacy in the role of Attorney General? He certainly didn't accept those arguments from Bill Lann Lee and Margaret Murrow when they raised their hand to give the same oath he did.

If we apply the Ashcroft standard to his own nomination, would he have a chance of being confirmed in the Senate? Fairness requires more than a simple test as to whether a nominee has advocated views with which we disagree. Fairness requires that we judge on balance whether that nominee can credibly set aside those views and be evenhanded.

At this moment in our Nation's history, our need for that type of leadership is compelling. We are a politically divided Nation with one of the closest elections in modern memory. Landmark civil rights and human rights laws hang in the balance. We need an Attorney General who will be fair and impartial in administering justice.

No issue in the United States is more divisive than civil rights or more in need of enlightened leadership. Yet throughout his career, Senator Ashcroft repeatedly turned down opportunities to reach out across the racial divide. There was, of course, a lot of attention given to the fact that Senator Ashcroft appeared at Bob Jones University, received an honorary degree, and delivered the commencement address. It did deserve attention. It became an issue in the last Presidential campaign.

After President Bush appeared there during the course of his campaign, he was so troubled by the public reaction to his appearance at Bob Jones University that he sent a letter to the late Cardinal O'Connor in New York assuring the cardinal that he did not agree with the prejudicial statements of Mr. Jones and regretted that he did not distance himself from them.

Let me quote a few words from George Bush's letter to Cardinal O'Connor in reflecting on his appearance before Bob Jones University, a letter of February 25, 2000:

Some have taken—and mistaken—this visit as a sign that I approve of the anti-Catholic and racially divisive views associ-

ated with that school. As you know from a long friendship with my family—and our own meeting last year—this criticism is unfair and unfounded. Such opinions are personally offensive to me and I want to erase any doubts about my views and values.

On reflection, I should have been more clear in disassociating myself from anti-Catholic sentiments and racial prejudice. It was a missed opportunity causing needless offense, which I deeply regret.

I accept President Bush at his word. I believe he was embarrassed when he reflected on some of the statements that have been made at Bob Jones University: Their ban on interracial dating among students; some of the cruel statements made about people of the Catholic and Mormon religions; of course, their decision, when a gay alumnus said he was going to revisit his campus at Bob Jones University, and they stated publicly if he came on campus, they would have him arrested for trespassing. I can understand the embarrassment of people as they reflect on those sorts of statements. But I cannot understand, after President Bush has made this acknowledgment, that when John Ashcroft had the same opportunity before the Senate Judiciary Committee, he didn't take that opportunity. He offered no apologies for his appearance at Bob Jones University.

I said: If you become Attorney General, would you return to Bob Jones University? He wouldn't rule that out.

He said: If I go back, I might talk to them about some of the things they have said and what they stand for.

I am sorry. I view that particular episode as troubling. It has little to do, if anything to do, with religion and more to do with tolerance. If elected officials don't take care as to where they speak and what they say, what comfort and encouragement they give to others, then I think we are derelict in our public responsibilities.

I think President Bush learned an important lesson. It is hard to imagine that his choice for Attorney General of the United States couldn't learn the same lesson from him, couldn't say before this committee exactly what President Bush said to the late Cardinal O'Connor, but he did not.

On the issue of school desegregation, my colleague, Senator KENNEDY, laid out the issue quite clearly before the Senate within the last hour or two in the course of the debate. I grew up in East St. Louis, IL, across the river from St. Louis. I associated myself more with St. Louis than most other cities as a child. I know, having grown up in that area on both sides of the river, that there have always been racial problems, sometimes bitter and violent, and sad situations arising because of it.

When there was an effort made in Missouri to deal with segregated schools, there was a voluntary desegregation plan that was agreed to by the students and their parents, by the administrators and the teachers, people living in the community, of how they

would voluntarily desegregate schools and give children an opportunity for a good education. We have heard during the course of the committee hearing, we heard again on the floor of the Senate, John Ashcroft used every tool in his tool box to try to stop this voluntary desegregation plan. Frankly, that is a poor reflection on what John Ashcroft would do as Attorney General.

He labeled the efforts of the Federal courts to desegregate Missouri's schools as a "testament to tyranny." Again, Governor Ashcroft missed an important opportunity to bridge the racial divide.

Then he had two bipartisan bills presented to him as Governor to expand voting rights in the city of St. Louis, which is predominantly African American. He vetoed the first saying: It doesn't help St. Louis. It should be a broader based and statewide bill.

The next year, the General Assembly of Missouri sent him the broader based statewide bill. He vetoed that as well, saying: This is too broad based and too general.

I think it is pretty clear that he was intent on not expanding an opportunity for voter registration and efforts for people to involve themselves in the voting process. What possible assurance could we have from his record that Attorney General John Ashcroft would dedicate himself to eliminating racial prejudice in America?

The next issue which I take with John Ashcroft is one which was probably the most important to me. On the day that President Bush nominated John Ashcroft, the leading radio station in St. Louis, KMOX, called me and asked for a comment. I told them that before I could vote for John Ashcroft, I had to have answers to several questions. First and foremost was the treatment of Judge Ronnie White. Of course, that is something I will speak to and an issue that came up time and again during the course of the hearings.

Within an hour or two, John Ashcroft called me after I made this radio statement and said: I want to talk to you. I need your vote.

I said: Senator, I will be happy to meet with you any time and discuss this, but let me make it clear, the first question I will have to you is about what happened to Judge Ronnie White, when he had an opportunity to become a Federal district court judge and you blocked that opportunity.

He said: That is fine. We will have to get together.

I said: My door is open.

John Ashcroft never called for such a meeting. I asked several questions of Senator Ashcroft at the hearing about the White nomination. I listened carefully to the testimony of Judge White himself. I understand why Senator Ashcroft did not ask for a meeting.

The story of Judge Ronnie White is one that bears repeating. This is not just another nominee for Federal



court. There are some fine men and women who have been nominated and confirmed. Let me tell you a little bit about Judge Ronnie White.

He was the first African American city counselor in the city of St. Louis. That, in and of itself, does not sound very impressive, but when Judge White explained his childhood growing up in one of the poorest sections of St. Louis, in one of the poorest homes and struggling throughout his life to earn an education and to go to law school—he was bused as a young student to one of these newly integrated schools. He recalled other children throwing food and milk at him and the other African American students coming off the bus. Life was not easy. He wasn't looking for sympathy. He was looking for a chance, and he got the chance. He went to law school, became the first African American city counselor in St. Louis. He became the first African American in Missouri history to be appointed to the appellate court of the State, and he became the first African American in the history of the State to serve on the Missouri Supreme Court.

If you visit St. Louis, you can't miss the arch. That is really the thing you think of right away. But within the shadow of the arch is a building which is historically so important to that city, State, and to our Nation. It is the St. Louis courthouse. It is a white, stone building, very close to the Mississippi River. The reason why this building is so historically significant is that it was in this courthouse that the Dred Scott case was argued and tried twice. It was on the steps of this courthouse before the Civil War that African Americans were sold as slaves.

When Ronnie White was appointed to the Missouri Supreme Court, he chose that old courthouse in St. Louis to take his oath of office. The St. Louis Post Dispatch, in commenting on that setting and his selection as the first African American to the Missouri Supreme Court, said:

It is one of those moments when justice has come to pass.

It certainly was. And as you listen to Judge White's testimony, you understand that this wasn't a matter of pride for his family in being nominated to the Federal district court. It wasn't just a matter of pride for his colleagues on the Missouri Supreme Court. It had to be a source of great pride for thousands of African Americans to see this man overcome such great odds to finally get a chance to serve on the Federal district court.

He never had that chance. The reason he didn't have that chance was that after 2 years of having his nomination pending before this Senate, after being approved twice by the Senate Judiciary Committee, after finally finding his name on the calendar of the Senate to be voted on to become a Federal district court judge, John Ashcroft decided to kill his nomination.

And he did it. He did it. He came to the floor, after speaking to his col-

leagues on the Republican side, and said that Judge Ronnie White was pro-criminal. He cited several decisions made by the judge and said that they were ample evidence that this man did not have appropriate sensitivity to become a Federal judge with a lifetime appointment when it came to enforcing our laws. Judge Ronnie White's name was then called for a vote.

It was defeated on a partisan vote. Every Republican voted against it. This is rare in the history of the Senate. It doesn't happen very often. Our review said it hadn't happened for 40 years, that a nominee was brought to the floor, subjected to that kind of public criticism, and defeated.

Frankly, it wasn't necessary. If John Ashcroft had decided that he wanted to stop Ronnie White, there were a variety of ways for him to do it, quietly and bloodlessly. But he didn't choose those options. He chose instead to attack this man and to attack him on the floor of the Senate.

When we were interrogating John Ashcroft about his criticisms, he said, the law enforcement groups are the ones who really told me that Ronnie White was not a good choice.

It is true that there was a local sheriff, whose family had been involved in a murder in a case where Judge Ronnie White had handed down a dissenting opinion, who sent a letter to John Ashcroft saying they objected to him. That is true. But it is also true that the largest law enforcement community in the State of Missouri, the Fraternal Order of Police, endorsed Ronnie White, and that the vast majority of law enforcement officials in that State endorsed Ronnie White for this Federal district courtship.

Sadly, he was defeated and, in the process, I am afraid, faced the kind of humiliation which no one should ever have to face—certainly not on the floor of the Senate.

I am troubled by John Ashcroft's willingness to distort a good judge's record beyond all recognition, to attack his character and integrity and to deliver this unjust condemnation on the floor of the Senate without ever giving Judge White an opportunity to respond and defend his name.

When Judge White appeared before the Judiciary Committee, it was clear to many of us that he deserved an apology for what had happened to him.

Why is this important in choosing a man to be Attorney General of the United States? When given the power as a Senator, I don't believe that John Ashcroft used it appropriately. The victim was a very good man.

There have been a lot of questions asked about the issue of reproductive rights of women and what the new Attorney General, John Ashcroft, would do with that authority. I know John Ashcroft's position. I respect him for the intensity of his belief in opposing Roe v. Wade for his entire public career. There are people in my State of Illinois and his State of Missouri who

feel just as passionately on one side or the other side of the issue. It worries some that he would be entrusted with the authority and responsibility to protect a woman's right to choose and what he would do with it. He tried to set the issue aside in his opening statement by saying he accepts Roe v. Wade and Casey v. Planned Parenthood, two Supreme Court cases, in Ashcroft's words, as the "settled law of the land." That, of course, raises questions. If it is the settled law of the land, what will he do in enforcing it?

One of the things that troubles me—and Senator MIKULSKI of Maryland raised this earlier—was the decision John Ashcroft made as attorney general of Missouri when there was an effort to have nurses provide women's health services in one of the poorest medically underserved sections of Missouri.

John Ashcroft attempted to block the nurses. He joined in filing a lawsuit against the nurses at their women's health clinic. These nurses were providing gynecological services, including oral contraceptives, condoms, and IUDs, Pap smears, and testing for venereal disease. He joined in suing these nurses to stop them from providing vital reproductive health services to low-income women in his home State.

As Governor in 1986, Senator Ashcroft signed a bill that defined life as beginning at fertilization, providing a legal basis to ban some of the most common and effective methods of contraception. In 1998 and 1999, Senator Ashcroft wrote letters to Senator BEN NIGHTHORSE CAMPBELL opposing a Senate amendment to require the FEHBP, the federal health insurance plan, to cover the cost of FDA-approved contraceptives, citing concerns that funding certain contraceptives was equivalent to funding abortifacients.

Nearly forty million women in America use some form of contraception. Would Attorney General John Ashcroft work to protect their right of privacy and their right to choose the medical services best for them and their families?

On the question of the "settled law of the land"—Roe and Casey—we have had this contentious debate on the floor of the Senate for years about a partial-birth abortion ban. Many of us have said we can agree to a ban so long as it not only protects the life of the mother but women who face grave health risks. Those who introduced the amendment—Senator SANTORUM of Pennsylvania and others—have refused to include that second phrase "health risk" as part of the bill. Recently, in a Supreme Court case, they considered a Nebraska partial-birth abortion ban, and the Supreme Court concluded that unless you protect the health of the mother, protecting the mother's life is not enough on a partial-birth abortion ban. They cited as the reason for it the same Casey decision which Senator Ashcroft described as the "settled law of the land" to make certain that it was clear.

Senator SCHUMER of New York and I asked Senator Ashcroft as Attorney General, if the Santorum partial-birth abortion ban comes to him by either the President asking whether he should veto it or Senator Ashcroft as Attorney General trying to decide whether to defend it, and it does not include the protection of a woman's health, what will he do. The answer to me seems fairly obvious. If the Casey decision is the settled law of the land, he would have to say the SANTORUM bill we considered before the Senate is unconstitutional, inappropriate, and inconsistent with Supreme Court decisions. That seems obvious to me.

Senator Ashcroft would not answer the question.

The clarity of his statement, his opening statement, disappeared. His answers were tentative and, unfortunately, very unsettling. The Attorney General must diligently protect women's rights in America—rights repeatedly confirmed in the Supreme Court. Senator Ashcroft's public record and his testimony before the Judiciary Committee leave that in doubt.

Senator Ashcroft has made troubling, at times shocking statements regarding the lynchpin of our American system of justice, the judicial branch of government. He is fond of the phrase "judicial despotism" and even used this as the title of a speech he gave before the Heritage Foundation. In it he vows to "fight the judicial despotism that stands like a behemoth . . ." over our great land. He tells us that "people's lives and fortunes" have been "relinquished to renegade judges," judges the labels "a robed, contemptuous intellectual elite." He speaks of America's courts as "out of control" and the "home to a 'let-them-eat-cake elite' who hold the people in the deepest disdain."

Senator Ashcroft went on to say: "Five ruffians in robes" on the Supreme Court "stole the right of self-determination from the people" and have even directly "challenged God. . ." So grievous are the actions of the Federal Judiciary, according to Senator Ashcroft, "the precious jewel of liberty has been lost."

These statements come from a speech Senator Ashcroft gave on judicial despotism. I suggest to my colleagues who have not read it that they do. Is this a person with such a deep mistrust of the character of justice in our great land that we should entrust him with the office of Attorney General?

Many years ago, during the Roosevelt administration, Supreme Court Justice Frank Murphy served as Attorney General and created the Civil Liberties Union to prosecute local officials who abused and even murdered blacks and union organizers. He summed up his constitutional philosophy in one sentence: "Only by zealously guarding the rights of the most humble, the most unorthodox and the most despised among us, can freedom flourish and endure in our land." Could Senator

Ashcroft rise to this awesome and often unpopular standard as our Attorney General?

We recently celebrated again the birthday of Dr. Martin Luther King, Jr. It was a huge gathering in the city of Chicago. Mayor Daley has an annual breakfast. I attended another breakfast sponsored by Rev. Jesse Jackson. Literally thousands of people came out to pay tribute to Dr. Martin Luther King, Jr. I am old enough to remember when Dr. Martin Luther King, Jr., was alive, and I can recall in the midsixties that Dr. Martin Luther King, Jr.'s visit to the city of Chicago was not welcome. He announced he was coming to Chicago to march in the streets of Cicero and other neighborhoods to protest racial segregation. Many people—Democrats, Republicans, and independents alike—were saying: Why is he doing this? Why is he stirring things up?

It is easy today to forget how unpopular Dr. Martin Luther King, Jr., was with the majority of Americans during his life. It was only after his assassination and our reflection on the contribution he made to America that the vast majority of Americans now understand that although he was unpopular, he was right. Dr. Martin Luther King, Jr.'s life, fighting for civil rights, tells an important story. When you are fighting for the rights of those discriminated against because of sexual orientation, when you are fighting for the rights of women, poor women in particular, when you are fighting for the rights of African Americans and Hispanics, it is often unpopular. But it is the right thing to do.

The Attorney General, more than any other Cabinet officer, is entrusted with protecting the civil rights of Americans. We know from our history, defending those rights can be controversial. I find no evidence in the public career of the voting record of Ashcroft that he has ever risked any political capital to defend the rights of those who suffer in our society from prejudice and discrimination.

As I said in the committee yesterday, it is a difficult duty to sit in judgment of a former colleague, but our Nation and our Constitution ask no less of each Member of the Senate. That is why I will vote no on the nomination of John Ashcroft to serve as Attorney General.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. If the Senator from Michigan will yield, I think we were going to go back and forth.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the Senator from Alabama has concluded, I be recognized.

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

Mr. SESSIONS. I was looking for Senator WARNER. In the absence of Senator WARNER, I will mention a couple of things.

How long will the Senator from Michigan speak?

Mr. LEVIN. Perhaps 15 minutes.

Mr. LEAHY. If I might, the agreement the distinguished Senator from Utah and I had—obviously an informal agreement—was that following the normal procedure in such a debate, we would be going from side to side. The distinguished Senator from Illinois has just spoken; the distinguished Senator from Alabama was going to speak. The normal rotation would go back to this side, and it would be the distinguished senior Senator from Michigan. That is without time agreements for any Senator.

Mr. REID. If the Senator from Alabama will yield.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. As I said this morning, we want to try to wrap up this debate in the near future. I know how fervently the Senator from Alabama feels about this issue, but I do say every time someone says something, we are not going to finish this debate. The Senator from Alabama has already spoken very eloquently—which was referred to this morning by Senator NICKLES, about what a great statement he made, and I heard part of his statement, and it was extremely good.

My point is, if the people on the other side of the aisle want us to finish this debate sometime tomorrow, we are going to have to be cut a little bit of slack and be able to proceed with our statements. Otherwise, we are going to go over until next week.

Mr. SESSIONS. I understand that is the position of the other side, that they would like this side to hush and have their full say all day.

I see the Senator from Virginia is here. I yield to the Senator from Virginia such time as he desires.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. If I could enter into a unanimous consent request sequencing the next two Senators: The Senator from Virginia be recognized, and after the Senator from Virginia has finished, then I be recognized, which is a modification of a previous unanimous consent.

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

Mr. WARNER. Mr. President, I am happy to accommodate the leadership and the floor managers. Would the Senator care to modify it now and take that time?

Mr. LEVIN. We were alternating.

Mr. WARNER. Does the Senator want to modify a unanimous consent request?

Mr. LEVIN. We just did.

Could the Senator from Virginia give us a time indication.

Mr. WARNER. I will take not more than 10 minutes if that is agreeable to my colleagues.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I join the many Members today to support



the nomination of our former colleague—our friend, indeed—John Ashcroft, to serve as the Attorney General of the United States.

Article II, section 2, of the Constitution provides that the President shall name and, with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States.

Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate; the Senate has the power to render advice and consent on the nomination.

In fulfilling the constitutional role of the Senate, throughout my career—some 23 years I have been privileged to represent the Commonwealth of Virginia—I have always tried to give fair and objective consideration to both Republican and Democratic Presidential Cabinet-level appointees; as a matter of fact, all appointees.

Traditionally, a President, especially after taking office following a national election, should be entitled to select individuals who he believes can best serve this Nation and his goals as President. It has always been my policy to review Cabinet nominees to ensure that the nominee has the basic qualifications and the basic experience to ensure that nominee can perform the job to which he has been nominated, to ensure that the nominee also will enforce the laws of the land that are key—and that is instrumental—in the consideration now being given to this important post of the Attorney General of the United States, and to ensure that the nominee possesses a level of integrity and character that the American people deserve and expect from public officeholder.

Therein, perhaps, rests the widest margin of discretion that should be exercised by the Senate. All 100 members have brought to bear in this Chamber, and in other areas in which we daily work to serve the Senate, experience that has enabled us to win the public office as Senator. That experience has fine-honed every Member of this Chamber in one way or another, such that he or she can judge facts, nominees, and the entirety of the situation to determine, does that individual have the integrity or do they not have that integrity?

That is a very important function we perform.

I say to my colleagues, and to my constituents, and to those who are interested in my views, that John Ashcroft has the qualifications and the experience and the integrity to undertake this important office.

Former Senator John Ashcroft from Missouri recently lost his election bid to the Senate under most unusual circumstances, not unlike the circumstances that faced my State at one time, when we lost one of our most valued public servants, a public servant who was contending for the office of the U.S. Senate, who had beaten me

fairly and squarely in basically a convention or modified primary type situation. I was in strong support of that individual. Then his light plane one night crashed.

I have had that experience. I shared it with my friend, John Ashcroft, because he was so deeply shaken by this tragedy. There is not a one of us who couldn't say, "Well, it could have been me," the way we have to travel across our States, across our land, in these small planes and many other modes of conveyance at all hours of the day and night.

John Ashcroft approached that tragic situation in a very balanced and fair manner. To some extent, he counseled with several of us. But it was a very difficult decision as to how he should conduct himself for the balance of that campaign. I think he did it admirably. He did it with great courage and respect for the tragedy that had befallen his State.

If I ever had any doubts about John Ashcroft, the manner in which he handled that tragic situation will forever place in my mind that this man has the integrity, not only to be Attorney General but to take on any public office of this land.

Our colleague served in the Senate from 1994 to 2000, serving as a leader in the passage of welfare reform legislation and fighting for lower taxes, strong national defense, greater local control of education, and enhanced law enforcement.

Prior to his service in the Senate, John Ashcroft served as Governor of Missouri from 1985 to 1993 and attorney general of Missouri from 1976 to 1985. He dedicated over 28 years of his life to public service—over a quarter of a century. If he had flaws in his integrity, they would have been carefully documented, I am sure, in that period of time.

I would like to add this, again based on having the privilege of serving in this Chamber many years and having gone through many hearings for Cabinet nominees and other nominees, this was a very thorough hearing. Legitimate questions can be asked as to how fair it might have been in some instances, but it was unquestionably thorough. It was prolonged—there is a question of the necessity of the length of it—but anyway, it was thorough.

In my opinion—and I say this with the deepest respect to the members of the committee and most especially to this nominee, John Ashcroft, and I say to my good friend, the ranking member, whom I have admired these many years in the Senate—John Ashcroft emerges as a better, a stronger, a more deeply committed man as a consequence of this process. I feel that ever so strongly. Each of us who has gone through these stressful situations that we confront from time to time in our public office—those of us who go through those situations—and withstand the rigors of such an examination, in all likelihood emerge a stronger person.

I see my friend standing. Does he wish to comment?

Mr. LEAHY. Mr. President, if I could, and I do not wish to interfere in any way in the Senator's time.

Mr. WARNER. Mr. President, I think this is an important point, certainly to this Senator. I value the views of my friend.

Mr. LEAHY. I respect the views of the distinguished Senator from Virginia, who has been my friend from day 1 in this place. I knew him before in his other capacities, such as Secretary of the Navy. I have cherished, at home, a souvenir from the bicentennial year which I received from him. He has been a man to whom I have gone for counsel on a number of issues. I refer to him as my Senator away from home because I spend the week in Virginia when we are in session.

He and I, of course, disagree on this nomination. I understand he stated his strong views on it. I have stated mine. I promised two things to both the then President-elect and Senator Ashcroft. I promised them two things when they called me to tell me they were going to nominate him: No. 1, that there would be questions, tough questions, but I would conduct a fair hearing. I believe I did. The nomination actually came to the Senate Monday of this week, the official papers. We are moving to go forward with this. Everybody in the Senate knows approximately how the vote will come out.

I tell the Senator from Virginia of a conversation I had. As he can imagine, prior to my announcing my opposition to Senator Ashcroft, I called Senator Ashcroft to tell him what I was going to say and notified the White House what I was going to say. But I suggested one thing. I don't think I divulge any confidence with Senator Ashcroft who spoke about what he has gone through. It might have been the same thing the Senator from Virginia said. I suggested what he do after he is sworn in is that he meet quietly and privately with a number of Senators and House Members of both parties—those who have an interest in law enforcement issues, interests that affect the Justice Department—meet on a private, off-the-record basis, hear their suggestions or their criticisms, and vice versa. He assured me that he would.

He asked me also if I would be willing to help bring Members who had voted against him or spoken against him to those meetings. I assured him I would do that, too. The Senator from Virginia makes a good point.

I think the debate is good. I hope Senators on both sides of the aisle will listen to the debate.

Again, I use this opportunity to mention one more time how much I have enjoyed the friendship and the wise counsel of my friend from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague. If I may say with deep respect to him as a friend first, and as a Senator second, I

think he agrees with my basic proposition that he emerges from this process a stronger and a more deeply committed public servant.

Mr. LEAHY. I do, yes.

Mr. WARNER. Certainly from that standpoint, that alone would give everyone a basis on which to cast a vote in favor of this nomination.

For those who are concerned about Senator Ashcroft's nomination, it is important to remember that once John Ashcroft is confirmed as our next Attorney General, he will serve at the pleasure of the President.

This time honored phrase, "At the pleasure of the President," has been used by Presidents throughout American history to show the American people that the President is the final arbiter of accountability for his Cabinet members.

And, also, I'd like to remind my colleagues in the Senate, and more broadly the American people, of the promises John Ashcroft has made and the oath that he will take. John Ashcroft has promised to every American that he will uphold the law of the land whether he disagrees with such a law or not. Once confirmed as Attorney General, John Ashcroft will raise his right hand and swear to uphold the law of the land.

When John Ashcroft makes a promise that he will uphold the law of the land, and when he takes that oath of office to uphold the law of the land, I take him at his word.

(The remarks of Mr. WARNER pertaining to the introduction of S. 225 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. WARNER. Mr. President, I yield the floor and thank my colleagues.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, the Senate will soon vote on whether or not one of our former colleagues and friend, Senator John Ashcroft, should be confirmed to the position of Attorney General of the United States. In the vast majority of Cabinet nominations, the decision is an obvious one. Most of a President's nominees to his Cabinet receive overwhelming, if not unanimous, support by the Senate, and that is as it should be. When it comes to Cabinet appointees, we as a Senate are willing to give the President wide berth in his choice, knowing that, unlike the lifetime appointment of Federal judges, the President must be able to choose appointees who can carry out his program during his term, people who share his values, his vision and his ideals. But the Constitution also requires us to exercise our judgment. The deference owed the President is due deference, not unlimited deference.

In his inaugural address to the Nation, President Bush laid out the vision and ideals he will seek to carry out, visions and ideals which I believe most of us share. He said:

The grandest of these ideals is an unfolding American promise that everyone deserves a chance, that no insignificant person was ever born.

And he called on Americans "to enact this promise in our lives and our laws." He then made this pledge: "I will work to build a single nation of justice . . ." The Department of Justice is the place above all where the chance to further the vision of "a single nation of justice" resides.

Like the rest of my colleagues, I know Senator Ashcroft in his role as Senator from, and as advocate for, the State of Missouri. I consider him a friend. But today we are not called upon to judge Senator Ashcroft as a friend or colleague, as a Senator representing his home State, or as a nominee for any other post but Attorney General of the United States—at this time in our history and keeping in mind the goal of building a "single nation of justice."

The Attorney General does not mechanically enforce the law. His job is not a matter of simply applying a specified law to a specified set of facts. Great discretion resides with the Attorney General and the proper functioning of the Department of Justice requires that the public—all the public—feels that discretion will be exercised with balanced and deliberative judgment.

There are many times when a prosecutor has within his grasp the power to prosecute or take a pass, and in that decision lies the lives of the people involved and their families. A commitment to enforce the law of the land is the beginning point, not the ending point. The discretion exercised by the Attorney General is not critical in the easy or obvious matters that do not require the Attorney General's most considered judgment, but in the complex and unclear ones where a commitment simply to enforce the law does not resolve the complexities, and where balanced deliberation is essential.

If America is to build a "single nation of justice," the Department of Justice should have as its head someone whose record demonstrates evenhandedness and whose rhetoric seeks to assure the American people of fair and balanced consideration, rather than division and distrust. More than 25 years ago, at his swearing-in ceremony, Edward Levi, Attorney General under President Ford, reflected this sentiment by stating if we are going to achieve "our common goals: among them domestic tranquility, the blessings of liberty and the establishment of justice" through the enforcement and administration of law, then it takes "dedicated men and women to accomplish this through their zeal and determination, and also their concern for fairness and impartiality."

While Senator Ashcroft's rhetoric over the years reveals his zeal and determination, it has not reflected the same concern for impartiality and fairness. I have concluded that his record

and his rhetoric are so divisive and polarizing that his nomination will not provide the necessary confidence all Americans are entitled to have in the fairness and impartiality required of the Department of Justice. Here are four examples:

First is his position and his effort with respect to the nomination of Judge Ronnie White as a Federal District Judge for the Eastern District of Missouri. It was unfair and inappropriate to maintain Judge White, a distinguished jurist on the Missouri Supreme Court, had "a slant toward criminals" and was "against . . . the culture in terms of maintaining order," as Senator Ashcroft did in his speech to the Senate on October 4, 1999. It was unjust to say Judge White practices "procriminal jurisprudence" and will use his "lifetime appointment to push law in a procriminal direction." It was an unfounded and unfair characterization of Judge White to assert that Judge White "has been very willing to say: We should seek, at every turn, in some of these cases to provide an additional opportunity for an individual to escape punishment." It was a significant distortion of Judge White's record for Senator Ashcroft to say in the same speech to the Senate that Judge White's "opinions, and particularly his dissents, reflect a serious bias against a willingness to impose the death penalty," given the fact that Judge White voted with then-Governor Ashcroft's appointees in death penalty cases 95 percent of the time.

Moreover, it was unfair that Senator Ashcroft did not raise any reference to the death penalty or any of his concerns about Judge White's record before or at Judge White's confirmation hearing. Judge White was not given the chance to respond to these allegations during the consideration of his nomination. Rather, these personal attacks came well after Judge White had appeared before the Judiciary Committee. When asked at his own confirmation hearing whether he treated Judge White fairly, Senator Ashcroft said:

I believe that I acted properly in carrying out my duties as a member of the committee and as a member of the Senate in relation to Judge White.

In responding in that fashion, he neither defended his characterizations, qualified them or withdrew them. Senator Ashcroft's response therefore left standing as his current view his claims and statements with respect to Judge White.

Second is Senator Ashcroft's interview with Southern Partisan magazine, a publication which has been described as a "neo-confederate." Senator Ashcroft not only granted an interview to Southern Partisan magazine, he commended the magazine for helping to "set the record straight." He said:

We've all got to stand up and speak in this respect, or else we'll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda.

While in that interview Senator Ashcroft expressed support for Southern Partisan's message, he later said that he did not know much about Southern Partisan and did not know what it promoted. Fair enough.

But since his interview with Southern Partisan, much has been said about the magazine in the media and at Senator Ashcroft's own confirmation hearing. Southern Partisan was described as a "publication that defends slavery, white separatism, apartheid and David Duke" by a media watch group.

In 1995, Southern Partisan offered its subscribers T-shirts celebrating the assassination of Abraham Lincoln. In the same year, an author of an article in that publication alleged "there is no indication that slavery is contrary to Christian ethics." In 1990, another article praised former Ku Klux Klan Grand Wizard David Duke as "a Populist spokesperson for a recapturing of the American ideal."

In 1996, an article in the magazine alleged "slave owners . . . did not have a practice of breaking up slave families. If anything, they encouraged strong slave families to further the slaves' peace and happiness." In 1991, another writer printed in the publication wrote, "Newly arrived in New York City, I puzzled, 'Where are the Americans?' for I met only Italians, Jews, and Puerto Ricans."

I take Senator Ashcroft at his word that he did not know much about Southern Partisan magazine when he praised them for helping to "set the record straight," in his words. I take him at his word. But where was the immediate disgust and repudiation when he learned what he had inadvertently praised? And, after the inquiries of others, why not make a prompt inquiry to satisfy himself that he had not inadvertently advanced the purpose of a racist publication? Even in his written responses to the Judiciary Committee, he said he only rejects the publication "if the allegations about [the] magazine are true."

More than 2 years after the original interview he gave to that magazine, it appears he never took it upon himself to inquire about the magazine's purpose, to see for himself if the allegations were true, and, if so, to correct the record.

A person being considered for the office of Attorney General—the single most important person charged with enforcing our Nation's civil rights laws in a fair and just manner—should accept the obligation to make that inquiry if the American people are to have faith that their Attorney General will "build a single nation of justice."

As a third example, I am troubled by Senator Ashcroft's previous speeches on drug treatment. In 1997, Senator Ashcroft told the Claremont Institute:

A government which takes the resources that we should devote toward the interdiction of drugs and converts them to treatment resources . . . is a government that accommodates us at our lowest and least instead of calls us to our highest and best.

During the same year, he addressed the Christian Coalition Road to Victory and said:

Instead of stopping drugs at the border, we're investing in drug treatment centers. Instead of calling America to her highest and best by saying "no" to drugs, we're accommodating drug users with treatment. . . .

Again, it is not just Senator Ashcroft's views on drug treatment that are troublesome—although they are—it is his choice of words, his rhetoric, that is so divisive and so polarizing. To suggest, as Senator Ashcroft does, that those who are crippled by addiction to drugs and who seek treatment are somehow the "lowest and least" violates President Bush's own inaugural promise that "no insignificant person was ever born" and that we will "build a single nation of justice."

When I asked Senator Ashcroft in a written question what he meant by "lowest and least," to give him an opportunity to comment or to explain or to confirm the clear impression that those words create, his response was a nonresponse.

A fourth example is Senator Ashcroft's opposition to James Hormel's nomination for Ambassador to Luxembourg. Senator Ashcroft stated in press accounts that he opposed Mr. Hormel's nomination because Mr. Hormel "actively supported the gay lifestyle." Senator Ashcroft also said a person's sexual orientation "is within what could be considered and what is eligible for consideration" with respect to the qualifications to serve as an Ambassador.

To suggest that a person could not represent America's interests or should be judged professionally because of sexual orientation is inappropriate and divisive.

When pressed on this issue by the ranking member of the Judiciary Committee, Senator Ashcroft further responded in writing:

I did not believe [Hormel] would effectively represent the United States in Luxembourg, the most Roman Catholic country in all of Europe.

To suggest that Luxembourg would not welcome Mr. Hormel's nomination is not true. Luxembourg has outlawed discrimination based on sexual orientation, and its Government specifically said they would welcome James Hormel as Ambassador. And, most importantly, to fail to retract such contentious statements about a person because of his sexual orientation adds further doubt that all our people will have confidence that this nominee will strive to build that single nation of justice for which the President has called.

In summary, I am deeply troubled by Senator Ashcroft's record of repeatedly divisive rhetoric and sometimes simply unfair personal attacks, such as what he has said and done about Judge White, his passive acceptance of the message of Southern Partisan, his statements about drug treatment as accommodating the "lowest and least,"

and his statements about Mr. Hormel's qualifications to serve his country because of his sexual orientation.

Senator Ashcroft has frequently engaged in "us versus them" rhetoric. He frequently rejects moderation and has even criticized some members of his own party for engaging in what he characterized as "deceptions" when they "preach pragmatism, champion conciliation [and] counsel compromise."

Senator Ashcroft, in his confirmation hearings, in his written answers to questions posed by a number of Senators, including myself, either reaffirmed some of his divisive statements or simply did not explain the extreme language. His refusal to comment on some of the most troubling past statements leaves them standing as his current views.

His language and his approach to issues in terms of "us versus them" would not prevent me from voting for his confirmation for most positions in the Cabinet. But more than any other Cabinet member, the Attorney General, as the chief law enforcement officer of the United States, is charged with the responsibility of assuring that the Department of Justice's goal is equal justice under the law for all Americans. And although I consider John Ashcroft a friend, I will vote no on the nomination of John Ashcroft for Attorney General of the United States.

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise in support of the nomination of John Ashcroft. I have had the opportunity, for the last several weeks, as a member of the Judiciary Committee, to listen to the testimony and to listen to what has turned out to be fairly extensive hearings.

The John Ashcroft I have known for 6 years, and whom most of us have known for 6 years—some have known a lot longer—does not really bear much resemblance to the individual who has been described by those who have attacked him during this process. I must say, he does not bear much resemblance to the individual whom some of my colleagues have pictured, both in debate on the Senate floor and in the Judiciary Committee.

The truth is that the John Ashcroft on whom we are going to vote, whose nomination we are taking up, whose nomination we will vote on tomorrow, is the same John Ashcroft we have known for 6 years.

He is a man of integrity, a man of honesty, and a man of courage. He is also a man who has taken controversial positions, a man who has cast in his lifetime thousands of votes. I don't think it should come as a shock to us that someone who has been in public office for a quarter of a century would have taken controversial positions. We would worry if he had not.

This is a man who served as assistant attorney general of the State of Missouri, who served for 8 years as their

elected attorney general, who served for 8 years as Missouri's elected Governor and then, for 6 years, as Missouri's elected U.S. Senator. He is a man who served as a member of the Senate Judiciary Committee.

It should come as no surprise that he has taken positions on many issues. It should come as no surprise that he has cast thousands of votes. And, yes, he clearly does have a long track record.

It should not come as a surprise that a record of a quarter of a century would generate criticism, or that it would generate a lot of criticism.

I said, when the Judiciary Committee hearing started, I sometimes get the feeling that the longer someone is in office, the more positions they have taken and, frankly, the better qualified they are, the more controversial their nomination probably is. And if you wanted someone with no controversy, the President would find someone to nominate who had virtually no track record to shoot at.

The fact is, this Attorney General nominee, this individual, John Ashcroft, after he is confirmed, will ultimately be judged as Attorney General not by any one particular position he will take or any one particular decision he will make.

If you look back over the last half a century, look at the Attorneys General and look at how history judges them. It is not the day-to-day decisions. It is probably a handful of big decisions to which we look. But even more important than that is probably the perception that we have about what type of person the Attorney General was: How did they conduct their office? What kind of respect did they have? Did they bring honesty and integrity and courage to that job?

The job of Attorney General is different. It is different in many respects than any other Cabinet position. It is different because this individual has to be adviser to the President, has to be able to give the President confidential, good advice. But he or she is more than that. He or she is the person who stands for law enforcement and, in a sense, is the chief law enforcement officer of this country.

The Attorney General has to be someone who can tell the President yes when the President needs to be told yes, but also, much more importantly, can look the President in the eye and tell the President no when the President has to be told no.

The Attorney General is ultimately someone who on certain occasions will disagree with the President. How that person conducts the office under those circumstances may define that person's tenure as Attorney General and how history judges that individual. It ultimately comes down to is the person a person of integrity, someone of honesty, someone of courage, someone who brings honor to the office, someone who cares passionately about justice.

My experience with John Ashcroft over the last 6 years is that clearly he

is such an individual. I have not always agreed with John. John and I have voted differently on certain issues—some high profile; some not so high profile. I don't think that is relevant.

What is relevant is, does this President have the right to have his nominee—I think he does—and is this a nominee who will conduct the office with integrity and with honesty. I have no doubt that history will judge John Ashcroft in a favorable light. As they look back on his tenure as Attorney General of the United States, people will say: I may have agreed with him; I may have disagreed with him on different issues. He may not always have been right, but I think he was a man of honesty, a man of goodwill, and he brought honor to the office.

I conclude by urging my colleagues to vote for John Ashcroft, a man who I believe will be a very excellent Attorney General at a time in our country's history when we need someone who will carry out the duties of that job with all the problems that we face as a country, all the challenges that we have, and who will, in fact, bring the expertise that that particular job needs.

I believe John Ashcroft has the experience, has the background, and has the integrity to be a very excellent Attorney General.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. SCHUMER. Thank you, Mr. President. I thank my colleagues on both sides of the aisle for their statements. This is what the Senate is supposed to do on very important issues of the day—deliberate as carefully as possible. We are doing that, and we are doing that very carefully in the Senate.

Mr. President, I rise in opposition to the nomination of John Ashcroft to be Attorney General of the United States. I do this with no glee or exultation. I do this without any feeling of joy. In fact, I believe this is a sad day in so many ways. In a certain sense, it is a sad day for John Ashcroft and his family. They have been through a lot in these past weeks. It is sad because while so many of us have disagreed with John Ashcroft's views and at times we thought his methods were untoward, he has devoted himself to public service, which I believe is a noble calling. In the heat of battle, it is not easy for those who speak against him and, certainly for Senator Ashcroft and his family, to hear people speaking against him.

It is a sad day for me because it is never easy opposing a nominee and a former colleague. I believe that one gives the President the benefit of the doubt in terms of appointments. It is the President's Cabinet. He won the election. Yes, it was close. But I said then and believe every bit as much today that the closeness of the election should do nothing to undermine the le-

gitimacy of the Presidency. I explained that I wanted to give the President his choice. And to have to oppose somebody, no less a colleague, is not easy and requires some thought and fortitude. So it is a sad day for me as a Senator. It is a sad day for the Senate because we are so divided on this nomination.

One of the things I have greatly appreciated since moving from the other body is the comity that still reigns here to a significantly greater extent than it does in the House and perhaps than it does in the body politic. We still are friends across the aisle. We fight hard. But when we can agree, we are much happier than when we disagree. That is the whole tone of the body. The Senator from West Virginia, more than probably any other person here, has made it clear to all of us that is what we aspire to be.

It is a sad day when the Senate is so staunchly and strongly divided when we would all, I think, prefer to be united. I don't believe division is coming from this side of the aisle. If we were truly bipartisan, we all would have supported Senator Ashcroft. No. I believe that when the President nominated Senator Ashcroft, he was well aware that someone of Senator Ashcroft's hard-right views would stir opposition, or should stir opposition. I don't accept in any way what some have said—that if this body were truly bipartisan, Senator Ashcroft would be confirmed 100-0.

You could argue that if the President were truly bipartisan, he might not have nominated Senator Ashcroft. For that reason, I think it is a sad day for the President. He has, in my judgment, had a good beginning to his term. He is reaching out. The message he sent during the campaign that he wished to work with people from both sides of the aisle in large part has been met, at least in these very early days of his administration.

One of my roommates was GEORGE MILLER, one of the stronger Democrats in the House. And he spent some time with the President and is utterly amazed and pleased with the President's attitude.

But this is particularly a sad day for the Presidency because this is the one place, more than any other, in the early morning of his administration where he has sent a nomination that is not, in my judgment, one that reaches out to the middle of the country, one that says I do want to be bipartisan.

At his inauguration the President said, "While many of our citizens prosper, others doubt the promise, even the justice, of our own country." Unfortunately, this choice for Attorney General has given many in our country even more reason to doubt this promise of justice.

Finally, it is a sad day for our country. The elections we went through created a lot of pain for a lot of people. There is a good portion of America that feels disenchanting and even

disenfranchised. This nomination, in my judgment, is the one position in the Cabinet where unity and ability to reach out to every part of the American people is called for and, more than any other, this nomination, sadly, threw salt on the wounds of those who felt disenfranchised.

It is a sad day—a sad day for Senator Ashcroft, a sad day for those of us who feel an honor-bound duty to oppose him. It is a sad day for the Senate. It is a sad day for the new President. It is a sad day for America.

With that said, it is important that we all recognize what the opposition to this nomination is not based on. It is not based on Senator Ashcroft's religion. It makes no difference whether he be Christian, or Jew, or Muslim, or Zoroastrian. His faith is a gift. As a person of faith myself, and a different faith than his, but deep and abiding faith, I respect his faith. I think it is a wonderful faith.

I think all things being equal, I would like to see a nominee for any high position in this land hold such a position of faith. But his faith, while it is a wonderful thing, and wonderful for many, respect for his faith does not mean one simply supports him. I wouldn't do that for anybody because of their own personal belief. I think it is unfair for some to say that because of one's faith, one should adopt an issue.

As many of my colleagues have said, this is a significant and important nomination. I think I should give my view of this. It is time to set the record straight that those of us who are taking issue with Senator Ashcroft's years of activist opposition to causes and ideals in which we believe so deeply, are basing that on his record as Governor, as State attorney general, and as Senator, and, emphatically, not on his religious faith.

About a month ago, when the process of this nomination first got underway, there was a lot of anger and even fury in our country. It didn't come from the leaders of a few groups; it came from citizens of different walks of life, of different races, of different genders, and of different sexual orientation, who, once they became familiar with Senator Ashcroft's record, said, How is this man going to be as Attorney General?

Given the view I stated earlier, I like to give the President the benefit of the doubt and am willing to support Cabinet members with whom I disagree ideologically if nominated by the President.

I decided to jot down on a piece of paper what I thought the hearings and ultimately the vote on the Ashcroft nomination should really be about. Frankly, I was concerned that with the torrent of opposition charges, countercharges, and a whirlwind of politics, the real issues on which we should focus would be obscured or consumed by other forces. I sat down at my kitchen table in Brooklyn on a Saturday morning and tried to formulate

what this nomination debate should boil down to, at least in the opinion of one Senator. This is what I wrote:

We should carefully analyze the functions of the Attorney General and then closely scrutinize Senator Ashcroft's record to determine whether he can fully, impartially, and adequately perform all of those functions. But merely asking if he can do the job is unhelpful. The hearings must probe into the nominee's positions on each of the many different areas of law that the Attorney General must enforce. These range from anti-trust and environmental laws to drug and gun laws to hate crimes, voting rights, and clinic protection laws.

After 3 weeks of statements, questions, answers, hearings, and now votes, I still think this statement cuts to the heart of the matter and has guided me ever since this process began.

What are the functions of the Attorney General? And what is the Ashcroft record? These are the two essential questions.

The duties of the Attorney General primarily involve: (1) enforcement of all Federal laws, both civil and criminal; (2) litigating the constitutionality of all Federal laws and regulations, including before the Supreme Court; (3) advising the President, the agencies, and even Congress on the constitutionality of laws and various federal actions; (4) judicial vetting and selection; (5) representing all of the federal agencies in litigation; and (6) supervising the U.S. attorneys.

This job is the most sensitive and one of the most powerful positions in the Cabinet.

Importantly, all of these complicated duties require the Attorney General to exercise enormous judgment and enormous discretion. Much of the power of the Attorney General adheres in this discretion, which is not constrained by law. Following law, to me at least, isn't enough—although it is an important threshold question.

I think it is fair and reasonable to examine Senator Ashcroft's public positions over the years, as well as how he has exercised the judgment and discretion and power vested in him. When we look at that record—and we did very closely in the hearings—we see a very stark picture of a man on a mission, a man who with passion and with zeal sought to advocate and enact the agenda of the far right wing of the Republican Party.

On civil rights, as Governor he fought voluntary desegregation—that is, voluntary desegregation—and vetoed bills designed to boost voter registration in the inner city of St. Louis. More recently, as Senator, he opposed the Hate Crimes Prevention Act, which would have strengthened the Federal response to hate crimes motivated by race, color, region, or national origin, and would have extended the law to cover crimes targeting gender, sexual orientation, and disability.

We all know about the Bob Jones speech and the Southern Partisan Review and the Ronnie White debacle. I

do not believe John Ashcroft is a racist. I don't just say that. He has appointed people of color to judicial and executive positions. His wife teaches at Howard University. But I think when you put all these pieces together, what you see is a pattern of insensitivity to the long and tortured history our country has had with race.

When several of my colleagues on the committee asked him for some feeling of remorse, given this record, we didn't see any. There wasn't any new sensitivity that showed itself.

The Attorney General of our country should not be insensitive. He should be just the opposite. The Attorney General, more than any other Cabinet minister, should be acutely aware and sensitive on the issue of race, which de Tocqueville, over 150 years ago, said would be the one thing that would stop America from greatness.

I do not believe this nomination for Attorney General meets that criteria.

On choice, Senator Ashcroft has been at the helm for decades leading the drive to overturn *Roe v. Wade* and eviscerate a woman's right to choose. His beliefs are heartfelt; they are sincere. However, in my judgment, they are wrong. He has led the charge to enact new abortion hurdles and restrictions. I am not saying that Senator Ashcroft should be rejected for being pro-life. I was happy to vote for Tommy Thompson to be the Secretary of HHS despite the fact that I disagree with his views on choice. And I believe that a pro-life position is not at all a disqualification for Attorney General, as much as I would prefer to see someone pro-choice.

Let me say to my colleagues on the other side of the aisle, if someone was nominated for Attorney General who was vehemently pro-choice, who simply did not just espouse a pro-choice position, but in his or her career spent decades trying to find ways of expanding the law so that, say, abortion on demand, for 9 months, would be perfectly legal, wouldn't Members be more upset and raise a louder voice than against a nominee who was simply pro-choice? Of course. Thus we who believe in the pro-choice side say it is not because Senator Ashcroft is pro-life that we oppose him but because of the vehemence and extreme position of his views. He hasn't been just anti-choice. He has been one of the most outspoken anti-choice crusaders in the country. It is not his belief that abortion is murder that makes me oppose him. It is his past willingness to bend and torture the law to serve his desire to eliminate, totally eliminate, even in rape and incest, a woman's right to choose that makes me oppose him.

This is not simply what he said but what he did when he had executive power, when he became the attorney general of Missouri. He didn't relinquish his role of a passionate advocate against choice, as he says he will now do. He joined in a suit against nurses who dispensed contraceptives. He sued

the National Organization of Women under the antitrust laws to muzzle their attempt to pass the ERA. He tried to pass statutes that end abortion. He tried to pass constitutional amendments to do the same.

For John Ashcroft, at least when he was Senator, ending abortion by any means necessary was the end all and be all of his political career.

There was some discussion in the hearings that some of the groups opposing this nomination were doing it to raise money and raise their profiles. I resent that. Let me say when you sit down with people in these groups and look them in the eye, what you see is fear, fear that we will start moving back to the days before *Roe v. Wade*, fear that back-alley abortions will again be the norm, fear that equal rights for women will become a figment of the past. Some may feel these fears are unfounded, but the motivation is not mercenary or crass, it is as deep and as heartfelt as the speeches I have heard from some of my colleagues supporting Senator Ashcroft.

Senator Ashcroft also, Mr. President, has been a leader in the charge against gun control. He has fought to kill legislation that would have made it easier to catch illegal gunrunners dealing with the issue of enforcement. He has vociferously opposed even the child safety locks and the assault weapons ban. These were some of the main issues with John Ashcroft's record that were examined at the Judiciary Committee hearings. To be fair, Senator Ashcroft took us on. He directly confronted many of those issues and unequivocally asserted that as Attorney General, he would uphold and enforce and defend all the laws of the land whether he agreed with them or not.

At the start of the hearings, I asked Senator Ashcroft the following question: When you have been such a zealot and impassioned advocate for so long, how can you just turn it off?

His answer was: I'll be driving a different car. There's nothing to turn off.

And our hearings in the committee revolved around this question: Given his past, what kind of future as Attorney General would he have? As I said at the committee vote yesterday, after all these hearings, all the witnesses, all the studying of the record, and Senator Ashcroft's testimony, the conclusion for me is clear. I do not believe that Attorney General Ashcroft can stop being Senator Ashcroft. I am not convinced that he can now step outside the ideological fray he has been knee-deep in, set his advocacy to one side and become the balanced decisionmaker with an unclouded vision of the law that this country deserves as its Attorney General.

Ironically, I don't think Senator Ashcroft disagrees we need a balanced Attorney General. That is why he went to great lengths during the hearing to portray himself as now being different than the Senator Ashcroft we all knew. He was not saying that someone of

such vehement and strong opposition, he was not saying that somebody so far to the right should be Attorney General, but he was saying he was a different person or would be a different person as Attorney General than he was as Senator. Every Senator will have to judge for himself or herself whether he can do that, even if he should want to. I do not think he can. In my opinion, John Ashcroft's unique past will indelibly mark his future, making his nomination a source of anger and fear to so many in the country.

I have one other point in this area. John Ashcroft, at least to so many in this country, has had the appearance of not being concerned about these issues, even if you do not agree with the reality. Many would dispute that. They would say the reality is there, too. I would myself. John Ashcroft has the appearance of not being concerned about issues of deep concern to these groups: to African Americans, to Latinos, to women, to gay and lesbian people. Just the appearance of such unfairness would make it much harder for him to be Attorney General. That "appearance" argument to me is not dispositive, but it weighs into the mix.

Let's assume for a minute, let's just accept on its face the argument that Senator Ashcroft can devote himself solely to the administration of existing law. Let's assume he will not challenge *Roe*—which he did say at the hearing. He said he would not roll back civil rights enforcement; he would not do away with the assault weapons ban. This is an appealing way to look at the nomination. Our better angels want to believe this will be the future of the Justice Department.

But in reality when you really explore it and don't avoid it, this is a naive perspective on the powers of the Attorney General. Just saying that Senator Ashcroft will enforce and respect existing law ignores the reality that the Attorney General has vast power and discretion to shape legal policy in the Federal judiciary, unhindered by any devotion to existing law.

My good friend from Wisconsin, Senator FEINGOLD, has argued that simply enforcement of the law is enough, and he will give Senator Ashcroft the benefit of the doubt that he will enforce the law.

I would argue, no, that while you certainly give the President the benefit of the doubt in terms of an appointment, ideology has to enter into it because the Attorney General does so many things that are not simply enforcing the law but are rendering opinions in choosing judges, areas of discretion. I do not think even if one ascribed to Senator FEINGOLD's argument—and I say it with due respect; he is a man of deep principle and I respect his decision. He argued eloquently in committee yesterday, and I know he thought long and hard about it. But even if you assume someone would en-

force the law fully, you could never rule out ideological disposition. If Bull Connor had been nominated for Attorney General, my guess is we would all say, even if we were certain he would enforce existing law, we would be certain he should not be Attorney General, based on his past, based on his ideology.

Senator Ashcroft is not Bull Connor; he was a bigot. Senator Ashcroft is not. But we all have to draw the line at some point. And we all do.

It is easy to say ideology will never enter into our decision, voting for a nomination. In reality, that principle is virtually impossible to maintain when given nominees of ideologies to the far side, one way or the other—far left or far right. It is logical because the job of Attorney General is not just enforcing the law, as important as that is. As I mentioned before, it contains vast discretion. For example, the Attorney General will decide what cases will or will not be pursued in the Supreme Court. That is not just following the law.

He will help draft new legislation and give influential commentary on proposals circulating in Congress. That is not just enforcing existing law.

He will, perhaps, be the most significant voice in the country when it comes to filling vacancies, particularly on our court of appeals.

Regarding the Supreme Court, most of us believe the President, with advice from the Attorney General, will make each decision. But at least if the past is prologue, for court of appeal judges, in the vetting process, the bringing of them forward, the Attorney General has enormous say and weight.

It is an enormous power. Every one of these is an enormous power. And none of them will be hindered at all by Senator Ashcroft's newfound devotion to existing law.

The argument that concerns me the most is the selection of Federal judges, or the one of these arguments, because these Federal judges will serve for decades. They often have the last word on some of the most significant issues our society faces. It is safe to expect that the principles that have guided Senator Ashcroft's views on judicial nominations in the Senate will be the exact same principles that will guide him as Attorney General. This is not "following the law."

Assuming, *arguendo*, that we believe Senator Ashcroft will follow existing law in his law enforcement capacity, there is no reason to believe in this capacity what he did in the Senate will be any different than what he does as Attorney General. And, as Attorney General, of course, he will have significantly more power and the same largely unbounded discretion in influencing who becomes a Federal judge—much more than he did as a Senator. As a Senator, he was willing to fully flex his ideological muscle and use power over nominations in a disturbing and divisive way.



In my 2 years in the Senate, the Ronnie White vote, led by Senator Ashcroft's decision to use the Republican caucus to kill the nomination, was the bleakest, most divisive and destructive moment I have experienced in my short stay in the Senate. It was a moment utterly lacking in—to use our President's words in his inaugural—civility, courage, compassion, and character.

But the Ronnie White nomination was just the most visible attempt by Senator Ashcroft to kill a nomination. The list goes on and on: Fletcher, Satcher, Lann Lee, Morrow, Sotomayor, Paez, Dyk, Lynch, Hormel—and there are others.

In just one term in the Senate, Senator Ashcroft devoted himself to opposing—and when possible scuttling and derailing—any nominee, no matter how well qualified and respected, who was in some way objectionable to his world view. It is virtually an inescapable conclusion that with the new power he would have over the selection of judges, Senator Ashcroft would seek out those who agree with his passionate views on choice and civil rights, on a separation of church and state, and gun control, among other issues, when he reviews judges.

I urge my colleagues to read the short article called "Judicial Despotism" that Senator Ashcroft wrote a few short years ago. This was not something written 25 years ago when he was a young man forming his views. In "Judicial Despotism," he vows to stop any judicial nominee who would uphold *Roe v. Wade*. Nothing could be more results oriented. In the hearings, Senator Ashcroft said he would be law oriented, not results oriented, but this is as results oriented as it gets.

If he is confirmed, I pray that more moderate souls prevail in the selection of judges. But as it now stands, this nomination poses an enormous threat to the future of the Federal judiciary, and I would oppose the nomination for that reason alone.

As I said when I started, this is a sad day—not a day for exultation, for happiness, for parades. It is sad when the Nation is divided. It is sad when a man who has served so long is the focal point of such intense opposition. It is sad when those of us who want to support a new President cannot. It is sad when, as a nation, a nation trying to bind itself together, we find salt thrown in those wounds.

I just hope, and I believe, that we will have better days to look forward to.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### PROVIDING FOR AN ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. HATCH. Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 18, an adjournment resolution, which is at the desk. I further ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia reserves the right to object.

Mr. BYRD. I thank the Chair. What are the terms of the adjournment resolution?

The PRESIDING OFFICER. The clerk will report the resolution.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 18) providing for an adjournment of the House of Representatives.

Mr. HATCH. It only affects the House and takes them out until next Tuesday.

Mr. BYRD. I thank the Senator. I have no objection.

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

The concurrent resolution (H. Con. Res. 18) was agreed to, as follows:

H. CON. RES. 18

*Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, January 31, 2001, it stand adjourned until 2 p.m. on Tuesday, February 6, 2001.*

#### NOMINATION OF JOHN ASHCROFT TO BE ATTORNEY GENERAL OF THE UNITED STATES—Continued

The PRESIDING OFFICER. The Senator from West Virginia, Mr. BYRD, is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, I daresay that each of us has received an enormous amount of correspondence and a plethora of phone calls about the nomination of Senator John Ashcroft to be Attorney General of the United States.

The favorable correspondence tends to emphasize support for the Senator's policy priorities and appreciation of his reputation for honesty and integrity.

The unfavorable correspondence tends to emphasize concern about the Senator's policy priorities and disapproval of the standards that he applied as a United States Senator and in previous offices that he held, but particularly to the standards he applied with regard to the disposition of Presidential nominations.

Mr. President, I speak today for myself as a Senator from the State of West Virginia, as one who has sworn an oath 16 times to support and defend the Constitution of the United States

against all enemies foreign and domestic.

I have heard arguments pro and con with respect to this nomination. I am not here to argue the case at all. I am here merely to express my support for the nomination of John Ashcroft to be Attorney General of the United States. I will not fall out with anyone else who differs from my views. As I say, I am not here to debate my views. I know what my views are. I am going to state them, and they will be on the record. I do not fault anyone else on either side of the aisle or on either side of the question. This is for each Senator to resolve in his or her own heart and in accordance with his or her own conscience.

With respect to that provision in the U.S. Constitution, investing in the U.S. Senate the prerogative, the right, and the duty of advising and consenting to nominations, I find no mandate as to what a standard may be. I am not told in that Constitution that I can or cannot apply a standard that is ideological in nature. I have no particular guidance set forth in that Constitution except exactly what it says. And I am confident, without any semblance of doubt, that as far as ability is concerned to conduct the office of Attorney General, there can be no question about Senator John Ashcroft's ability to conduct that office.

He has held many offices. He has been a Governor of the State of Missouri. He has been a United States Senator. He has been an attorney general of the State of Missouri and, as I understand it, he has been the chairman—I may not have the title exactly right—of the National Association of Attorneys General of the United States. These are very important offices. They are high offices. They are offices that reflect honor upon the holder thereof.

To have been selected for these high offices, John Ashcroft must have enjoyed the respect and the confidence of the people of Missouri and of his colleagues, other Attorneys General throughout the United States.

I, myself, do consider ideology when I consider a nominee, for this office, Attorney General, and in particular for the offices of Federal district judgeships or appellate judgeships, and U.S. Supreme Court Judgeships; yes, I do. I apply my own standards of ideology, and lay them down beside the record, if there be such, of a nominee. And I may reach a judgment based on ideology.

I have no problem with others who want to apply the criterion of ideology. I have no problem with those who say it should not be applied. This is for each Senator to determine.

It is our understanding, based on Senator Ashcroft's record, certainly based on news reports, and other sources from which we might reach a judgment, that Senator Ashcroft is a conservative. I personally have no problem with that. I consider myself a conservative in many ways; in some ways a liberal.