TABLE 1.—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002—Continued

[In millions of dollars]

	Budget authority	Outlays
Mass Transit	0	5,275
Conservation	1,760	1,473
Mandatory	358,567	350,837
Total	1,089,314	1,085,612

Pursuant to section 311 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

TABLE 2.—REVISED BUDGET AGGREGATES, 2002

[In millions of dollars]

	Budget authority	Outlays
Current allocation: Budget Resolution	1,710,450	1,653,782
Adjustments: Emergency Spending	−5,139	−962
Revised allocation: Budget Resolution	1,705,311	1,652,820

Prepared by SBC Majority Staff on 9–10–02.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred August 22, 2002 in San Francisco, CA. Two people beat a lesbian outside a nightclub. The assailants, Jack Broughton, 35, and Jean Earl, 32, punched and kicked the victim, who was later treated at San Francisco General Hospital. Police say that the attackers shouted anti-gay slurs, and are investigating the incident as a possible hate crime.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

COMMUNITY HERO

Mr. SMITH of Oregon. Mr. President, I rise to salute a World War II veteran from my home State of Oregon. Today, I want to recognize the efforts of August F. ''Gus'' Smoorenburg, a member of the European resistance fighters who lived and struggled in Nazi occupied territories throughout the last century's largest and most destructive war.

Born in Amsterdam in the 1920s, Gus was 19 years old when Germany invaded Holland, Luxembourg, and France. To stop the Germans, the Dutch tried using their own landscape, opening the country's famous dams and sluices to stop tanks and trucks filled with soldiers. After the brutal killing of thousands of civilians, including schoolchildren, the Dutch surrendered on May 15, 1940.

The European resistance fighters, as they have come to be known, began as independent groups of youths clandestinely sabotaging the occupying German forces by whatever means at their disposal. Resistance groups sprang up in every Nazi-occupied country. Gradually, like-minded people banded together and worked in secret to overthrow the invaders. Dutch, French and Polish youths risked their lives day and night to slow the advance of the Nazi forces. They accomplished small victories by such simple methods as rearranging traffic signs and filling the gas tanks of their enemy's vehicles with sugar. These groups became a part of an organized European resistance movement when they finally established short-wave radio contact with London and received coded messages.

The risks of joining the resistance were great. A resistance worker caught by the Nazis faced certain death. The Germans sometimes rounded up and executed hundreds of civilians in revenge for an act of sabotage. Gus' life was no exception to this backlash to the resistance fighters. By 1944 his family was living on meager rations of tulip bulbs and two of his fellow resistance fighters and a cousin had been executed by firing squad.

The ferociousness of the fighting and danger that these unsung heroes faced are conveyed by his description of the bombing of Dortmund: ''This sight I cannot ever forget: burning roofs collapsing, burning window sills and brick walls crashing down on sidewalks, bricks and debris lying everywhere from roads as well as from houses, blown to pieces. It is unforgettable . . . to see and feel a city, an entire city, on fire.''

Gus moved to Portland, OR in 1977 to be closer to his oldest daughter. He has been a valuable member of the community and a welcome piece of living history. I believe it is time that he, along with other resistance fighters, be recognized for the sacrifices they selflessly made fighting the oppressive forces of fascism during those dark years.

Each allied nation is indebted to patriots such as Gus; without their invaluable efforts the greatest war of the last century might have lasted much longer and cost many more thousands of lives. It is with humble respect and praise that I offer my recognition today to Gus and the European resistance fighters.

THE NOMINATION OF PRISCILLA OWEN

Mr. LEAHY. Mr. President, in light of the continuing criticism of Republicans about the Senate Judiciary Committee's vote on the nomination of Priscilla Owen to be a judge on the United States Court of Appeals for the Fifth Circuit, I am making my statement from September 5, 2002, on that vote a part of the RECORD.

I would also like to respond to the misleading suggestion that the Senate Judiciary Committee has never defeated a nominee who received a ''well qualified'' rating from the American Bar Association. In fact, in the prior six and one-half years of Republican control of the Senate the nominations of more than a dozen judicial candidates with unanimous well qualified ratings were defeated in the Committee through the decision of Republicans to block them from receiving hearings and votes on their nominations. More than three dozen others received partial ratings of ''well qualified'' and ''qualified.'' More than 50 of President Clinton's judicial nominees never received Committee votes, despite their ratings. The truth is that Republicans defeated dozens of judicial nominees with well-qualified ratings, not in the light of day with a democratic vote, but in the dark of night through secret, anonymous holds or other tactics.

Here are some of the Clinton nominees with unanimous well qualified or partial well qualified ratings who never received a Senate Judiciary Committee vote and whose nominations ended in Committee: Alston Johnson, Fifth Circuit, James Duffy, Ninth Circuit, Kathleen McCree-Lewis, Sixth Circuit, Enrique Moreno, Fifth Circuit, Judge James Lyons, Tenth Circuit, Allen Snyder, D.C. Circuit, Judge Robert Cindrich, Third Circuit, Judge Stephen Orlofsky, Third Circuit, James Beatty, Fourth Circuit, Frederic Woocher, Central District of California, Richard Anderson, District of Montana, Jeffrey Coleman, Northern District of Illinois, John Bingler, Western District of Pennsylvania, Elena Kagan, D.C. Circuit, Elizabeth Gibson, Fourth Circuit, Lynette Norton, Western District of Pennsylvania, Judge Legrome Davis, Eastern District of Pennsylvania, Judge Richard Leonard, Eastern District of North Carolina, Judge Linda Reigle, District of Nevada, Gary Sebelius, District of Kansas, Judge David Cercone, Western District of Pennsylvania, Patricia Coan, District of Colorado, Stephen Achelpohl, District of Nebraska, Judge Jorge Rangel, Fifth Circuit, Ronald Gould, Ninth Circuit, and Robert Freedburg, Eastern District of Pennsylvania. This is just a partial list.

Of course some of President Clinton's judicial nominees who received hearings and Committee votes had also received well-qualified ratings, but that did not stop Republicans from voting against them and trying to defeat their nominations. For example, some of the same Republicans who now claim it is unprecedented to defeat a nominee with a well-qualified rating voted against several Clinton nominees with that same rating, either in Committee, on the floor or both. The following nominees with well qualified ratings

were subject of Republican efforts to defeat their nominations, despite the rating that Republicans now cling to like a impermeable shield against criticism: Judge Rosemary Barkett, Eleventh Circuit, Judge Merrick Garland, D.C. Circuit, Judge William Fletcher, Ninth Circuit, Judge Ray Fisher, Ninth Circuit, Judge Marsha Berzon, Ninth Circuit, Judge Sonia Sotomayor, Second Circuit, Judge Margaret McKeown, Ninth Circuit, Judge Richard Paez, Ninth Circuit, Judge Margaret Morrow, Central District of California, Judge Gerald Lynch, Southern District of New York, and Mary McLaughlin, Eastern District of Pennsylvania.

Republicans tried mightily to defeat these nominations. In fact, some of these nominees were asked about their ABA membership, as if being active in the Nation's largest bar association were somehow disqualifying. Republicans almost defeated some of these nominations. For example, Judge Paez was voted out of committee with barely a majority, and he received 39 Republican votes against his nomination despite his partial well-qualified rating. Judge Fletcher, who had a unanimous well-qualified rating, received negative votes in Committee from some of the same Republicans now complaining about negative votes on the nomination of Justice Owen, and Judge Fletcher's nomination received 41 Republican votes against his confirmation.

Thus, what Republicans are really complaining about is not that a nominee who received a well- qualified rating was defeated, but that one of their nominees was defeated, regardless of her ABA rating. That is understandable. What is not understandable is their effort to distort the facts and the history of defeat of numerous other nominees of President Clinton who had the same rating as Justice Owen. Those ratings were no obstacle back then to Republican efforts to defeat those nominations, either through blocking hearings and votes or through attempts to defeat nominations in the Committee and on the floor. It was not due to lack of effort on their part that a nominee with a well-qualified rating was not actually voted down on their watch. In fact, dozens were defeated in far less public ways, but their nominations failed, nonetheless, and were returned to the President without confirmation.

Additionally, I would like to respond to the notion that the vote against Justice Owen was somehow ''anti-woman.'' Such a claim, as that made by Attorney General Ashcroft, is absurd. I recall that when John Ashcroft was in the Senate he voted against the confirmation of at least 11 judicial nominees of President Clinton and almost half of them are women who now sit on the federal bench. The Senate Judiciary Committee has been far fairer to this President's judicial nominees, including the women he has nominated to the federal bench.

Since the reorganization of the Senate Judiciary Committee 14 months ago, 17 women nominated to the Federal bench by President Bush have been given a hearing and reported out of committee. Sixteen have already been confirmed by the Democratic-led Senate. Four of these women were nominated to the Circuit Courts and were some of the first nominees in years to receive hearings, after the anonymous holds and obstruction during the period of Republican control of the Senate. Ten of those women nominees with records of fairness as lower federal courts or State court judges have been voted out of the Democratic-led Senate Judiciary Committee, including former Minnesota Supreme Court Justice Joan Lancaster.

Justice Owen's record, in contrast, was not one of fairness and adherence to precedent. Instead, time after time, Justice Owen's written opinions demonstrated her willingness to substitute her policy preferences for those of the Texas legislature and her determination to distort precedent. Even her fellow judges criticized her approach. These issues are discussed in more detail in my full Judiciary Committee statement that follows:

Statement of Senate Judiciary Committee Chairman Patrick Leahy on September 5, 2002 on the nomination of Justice Priscilla Owen to the United States Court of Appeals for the Fifth Circuit:

Today, the Senate Judiciary Committee considered a number of the President's nominees, including Priscilla Owen to be a judge on the United States Court of Appeals for the Fifth Circuit, and Reena Raggi to be a judge on the United States Court of Appeals for the Second Circuit. These two nominees were the 80th and 81st judicial nominees voted on by the Committee in less than 15 months, and the 16th and 17th circuit court nominees voted on by the committee in that time. This committee has worked diligently since the change in majority last summer to consider more than 250 of the President's nominees.

During our first year in the majority, we have held twice as many hearings for President Bush's Courts of Appeals nominees as were held in the first year of the Reagan Administration, when the Senate was controlled by Republicans, and five times as many as in the first year of the Clinton Administration, when the Senate was controlled by Democrats. Under Democratic leadership, this committee has also voted on more judicial nominees, 79 so far, than in any of the six and one-half years of Republican control that preceded the change in majority. We have already voted on twice as many circuit court nominees, 15, as the Republican majority averaged in the years they were in control. In fact, this last year we voted on more judicial nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than Republicans voted on in 1996 and 1997 combined.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated. By many measures the Committee has achieved almost twice as much this last year as Republicans averaged during their years in control.

In the six and one-half year period of Republican control before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 63 to 110. We have reversed those trends, even though 43 vacancies have arisen since the changeover last year.

I have taken a number of actions to seek a cooperative and constructive working relationship with all Senators on both sides of the aisle and with the White House in order to make the confirmation process more orderly, less antagonistic, and more productive. Not all of my efforts have been successful and very few of my suggestions to the Administration have yielded results, but I have continued to make these efforts in the best interests of the country, the Senate and this committee.

I am proud of the work the Committee has done since the change in the majority. I am proud of the way we have considered nominees fairly and expeditiously.

The circuit court nominees voted on by the Senate Judiciary Committee today are two very different examples of the types of nominees sent to the Senate by this President. Judge Reena Raggi was appointed to the trial court in 1987 by President Ronald Reagan. She has a solid record of accomplishment in both the private and public sectors. She received the strong bipartisan support of two Democratic Senators, CHARLES SCHUMER and HILLARY RODHAM CLINTON, and of the New York legal community. We have every reason to believe that she will serve with distinction on the Second Circuit as a fair and impartial judge. She is a conservative Republican.

In sharp contrast is the record of the other circuit court nominee we considered today: Justice Priscilla Owen, a nominee whose record is too extreme even in the context of the very conservative Texas Supreme Court.

Justice Owen has been nominated to fill a vacancy that has existed since January, 1997. In the intervening five years, President Clinton nominated Judge Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. Despite his qualifications, and his unanimous rating of Well Qualified by the ABA, Judge Rangel never received a hearing from the Committee, and his nomination was returned to the President without Senate action at the end of 1998, after a fruitless wait of 15 months.

On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill that same vacancy. Mr.

Moreno did not receive a hearing on his nomination either, for more than 17 months. President Bush withdrew the nomination of Enrique Moreno to the Fifth Circuit and later sent Justice Owen's name in its place. It was not until May of this year, at a hearing before Senator SCHUMER, that this committee heard from any of President Clinton's three unsuccessful nominees to the 5th Circuit. This May Mr. Moreno and Mr. RANGEL testified along with a number of other Clinton nominees about their treatment by the Republican majority. Thus, Justice Owen is the third nominee to this vacancy and the first to be accorded a hearing before the Committee.

In fact, when the Committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit last fall, it was the first hearing on a Fifth Circuit nominee in seven years. By contrast, Justice Owen is the third nomination to the Fifth Circuit on which this committee has held a hearing in less than one year. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceeded this July, as I said that we would, with a hearing on Justice Owen.

Justice Owen is one among 16 Texas nominees who have been considered by this Committee since I became Chairman. So far, five District Court judges, four United State Attorneys, three United States Marshals, and three executive branch appointees from Texas have moved swiftly through the Judiciary Committee.

When Justice Owen was initially nominated, the President changed the confirmation process from that used by Republican and Democratic Presidents for more than 50 years. That resulted in her ABA peer review not being received until later in the summer. As a result of a Republican objection to the Democratic leadership's request to retain all judicial nominations pending before the Senate through the August recess, the initial nomination of Justice Owen was required by Senate rules to be returned to the President without action. The Committee nonetheless took the unprecedented action of proceeding during the August recess to hold two hearings involving judicial nominations, including a nominee to the Court of Appeals for the Federal Circuit.

In my efforts to accommodate a number of Republican Senators, including the Republican Leader, this Committee's ranking member, and at least four other Republican members of this Committee, I have scheduled hearings for nominees out of the order in which they were received. This has been a longstanding practice of the Committee.

It is also a fact that less controversial nominations are easier to consider and are, by and large, able to be scheduled sooner than more controversial nominations. This is especially important in the circumstances that existed last summer at the time of the change in majority. At that time we faced what Republicans have now admitted had become a vacancies crisis. From January 1995 when the Republican majority assumed control of the confirmation process in the Senate until the shift in majority last summer, vacancies rose from 65 to 110 and vacancies on the Courts of Appeals more than doubled from 16 to 33. I thought it important to make as much progress as quickly as we could in the time available to us last year, and we did. Evaluating the record of a nominee whose record raises questions as serious as those about Justice Owen simply takes longer.

The responsibility to advice and consent on the President's nominees is one that I take seriously and that this committee takes seriously. Justice Owen's nomination to the Court of Appeals has been given a fair hearing and a fair process before this Committee. I thank all Members of the Committee for their fairness. Those who have had concerns have raised them and have heard the nominee's responses, in private meetings, at her public hearing and in written follow-up questions.

I would particularly like to commend Senator FEINSTEIN for her evenhandedness in chairing the hearing for Justice Owen. It was a long day, in which nearly every Senator who is a member of this Committee came to question Justice Owen, and Senator FEINSTEIN handled it with patience and fairness.

I am proud that Democrats and most Republicans have kept to the merits of this nomination, and have not chosen to vilify, castigate, unfairly characterize and condemn without basis Senators working conscientiously to fulfill their constitutional responsibilities. To those who will take this occasion to engage in name-calling or accusations of political posturing, I can only express my disappointment.

The constitutional responsibility to advise and consent to the President's life tenure judicial nominees is not an occasion to rubber stamp. The nomination of Justice Priscilla Owen presents a number of areas of serious concern to me.

The first area of concern to me is Justice Owen's extremism even among a conservative Supreme Court of Texas. The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize Justice Owen and the dissents she joined in ways that are highly unusual and that highlight her ends-oriented activism. A number of Texas Supreme Court Justices have pointed out how far from the language of statute she has strayed in her attempts to push the law beyond what the legislature intended.

One example is the majority opinion in Weiner v. Wasson, 900 S.W.2d 316, Tex. 1995. In this case, Justice Owen wrote a dissent advocating a ruling against a medical malpractice plaintiff injured while he was still a minor. The issue was the constitutionality of a State law requiring minors to file medical malpractice actions before reaching the age of majority, or risk being outside the statute of limitations. Of interest is the majority's discussion of the importance of abiding by a prior Texas Supreme Court decision unanimously striking down a previous version of the statute. In what reads as a lecture to the dissent, then-Justice John Cornyn, the current Texas Attorney General and Republican nominee for the U.S. Senate, explains on behalf of the majority:

> Generally, we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such circumstances alone ought to persuade us that stare decisis is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in [the previous case]. . . . Finally, under our form of government, the legitimacy of the judiciary rests in large part upon a stable and predictable decision-making process that differs dramatically from that properly employed by the political branches of government. Id. at 12–13. (Citations omitted.)

According to the conservative majority on the Texas Supreme Court, Justice Owen went out of her way to ignore precedent and would have ruled for the defendants. The conservative Republican majority followed precedent and the doctrine of stare decisis.

In Montgomery Independent School District v. Davis, 34 S.W. 3d 559 (Tex. 2000), Justice Owen wrote another dissent which drew fire from a conservative Republican majority, this time for her disregard for legislative language. In a challenge by a teacher who did not receive reappointment to her position, the majority found that the school board had exceeded its authority when it disregarded the Texas Education Code and tried to overrule a hearing examiner's decision on the matter. Justice Owen's dissent advocated for an interpretation contrary to the language of the applicable statute. The majority, which included Alberto Gonzales and two other appointees of then-Governor Bush, was quite explicit about its view that Justice Owen's position disregarded the law:

> The dissenting opinion misconceives the hearing examiner's role in the . . . process by stating that the hearing examiner 'refused' to make findings on the evidence the Board relies on to support its additional findings. As we explained above, nothing in the statute requires the hearing examiner to make findings on matters of which he is unpersuaded. . . . Id. at 25–26.

The majority also noted that:

> The dissenting opinion's misconception of the hearing examiner's role stems from its disregard of the procedural elements the Legislature established in subchapter F to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards. The Legislature maintained

local control by giving school boards alone the option to choose the hearing-examiner process in nonrenewal proceedings. . . . By resolving conflicts in disputed evidence, ignoring credibility issues, and essentially stepping into the shoes of the factfinder to reach a specific result, the dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board. . . .'' Id. at 28.

Collins v. Ison-Newsome, 73 S.W.3d 178, is yet another case where a dissent, joined by Justice Owen, was roundly criticized by the Republican majority of the Texas Supreme Court. The Court cogently stated the legal basis for its conclusion that it had no jurisdiction to decide the matter before it, and as in other opinions where Justice Owen was in dissent, took time to explicitly criticize the dissent's positions as contrary to the clear letter of the law.

At issue was whether the Supreme Court had the proper ''conflicts jurisdiction'' to hear the interlocutory appeal of school officials being sued for defamation. The majority explained that it did not because published lower court decisions do not create the necessary conflict between themselves. The arguments put forth by the dissent, in which Justice Owen joined, offended the majority, and they made their views known, writing:

The dissenting opinion agrees that ''because this is an interlocutory appeal . . . this Court's jurisdiction is limited,'' but then argues for the exact opposite proposition . . . This argument defies the Legislature's clear and express limits on our jurisdiction. . . . The author of the dissenting opinion has written previously that we should take a broader approach to the conflicts-jurisdiction standard. But a majority of the Court continues to abide by the Legislature's clear limits on our interlocutory-appeal jurisdiction. Id. at 182.

They continue:

[T]he dissenting opinion's reading of Government Code sec. 22.225(c) conflates conflicts jurisdiction with dissent jurisdiction, thereby erasing any distinction between these two separate bases for jurisdiction. The Legislature identified them as distinct bases for jurisdiction in sections 22.001(a)(1) and (a)(2), and section 22.225(c) refers specifically to the two separate provisions of section 22.001(a) providing for conflicts and dissent jurisdiction. . . . [W]e cannot simply ignore the legislative limits on our jurisdiction, and not even Petitioners argue that we should do so on this basis. Id. at 183.

Again, Justice Owen joined a dissent that the Republican majority described as defiant of legislative intent and in disregard of legislatively drawn limits.

Some of the most striking examples of criticism of Justice Owen's writings, or the dissents and concurrences she joins, come in a series of parental notification cases heard in 2000. They include:

In re Jane Doe 1, where the majority included an extremely unusual section explaining its view of the proper role of judges, admonishing the dissent joined by Justice Owen for going beyond its duty to interpret the law in an attempt to fashion policy.

Giving a pointed critique of the dissenters, the majority explained that, ''In reaching the decision to grant Jane Doe's application, we have put aside our personal viewpoints and endeavored to do our job as judges—that is, to interpret and apply the Legislature's will as it has been expressed in the statute.'' 19 S.W.3d 346.

In a separate concurrence, Justice Alberto Gonzales wrote that to the construe law as the dissent did, ''would be an unconscionable act of judicial activism.''

In re Jane Doe 3, Justice Enoch writes specifically to rebuke Justice Owen and her fellow dissenters for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of a minor's intent to have an abortion, saying, ''abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.''

In one case that is perhaps the exception that proves the rule, Justice Owen wrote a majority that was bitterly criticized by the dissent for its activism. In In re City of Georgetown, 53 S.W. 3d 328, (Tex. 2001), Justice Owen wrote a majority opinion finding that the city did not have to give the Austin American-Statesman a report prepared by a consulting expert in connection with pending and anticipated litigation because such information was expressly made confidential under other law, namely the Texas Rules of Civil Procedure.

The dissent is extremely critical of Justice Owen's opinion, citing the Texas law's strong preference for disclosure and liberal construction. Accusing her of activism, Justice Abbott, joined by Chief Justice Phillips and Justice Baker, notes that the legislature, ''expressly identified eighteen categories of information that are 'public information' and that must be disclosed upon request . . . [sec. (a)] The Legislature attempted to safeguard its policy of open records by adding subsection (b), which limits courts' encroachment on its legislatively established policy decisions.'' Id. at 338. The dissent further protests:

[b]ut if this Court has the power to broaden by judicial rule the categories of information that are 'confidential under other law,' then subsection (b) is eviscerated from the statute. By determining what information falls outside subsection (a)'s scope, this Court may evade the mandates of subsection (b) and order information withheld whenever it sees fit. This not only contradicts the spirit and language of subsection (b), it guts it. Id.

Finally, the opinion concluded by asserting that Justice Owen's interpretation, ''abandons strict construction and rewrites the statute to eliminate subsection (b)'s restrictions.'' Id. at 343.

These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of her activist views.

Ends-Oriented Judicial Activism Showing Bias Against Consumers, Victims, Individuals.—I am also greatly concerned about Justice Owen's record of ends-oriented decision making as a Justice on the Texas Supreme Court. As one reads case after case, particularly those in which she was the sole dissenter or dissented with the extreme right wing of the Court, her pattern of activism becomes clear. Her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation, leading to the conclusion that she sets out to justify some pre-conceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions. This is a judge whose record reflects that she is willing and sometimes eager to make law from the bench.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written.

One of the cases where this trend is evident is FM Properties v. City of Austin, 22 S.W. 3d 868 (Tex. 1998). I asked Justice Owen about this 1998 environmental case at her hearing. In her dissent from a 6–3 ruling, in which Justice Alberto Gonzales was among the majority, Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as, ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners.

In this case, the Texas Supreme Court found that a section of the Texas Water Code allowing certain private owners of large tracts of land to create ''water quality zones,'' and write their own water quality regulations and plans, violated the Texas Constitution because it improperly delegated legislative power to private entities. The Court found that the Water Code section gave the private landowners, ''legislative duties and powers, the exercise of which may adversely affect public interests, including the constitutionally-protected public interest in water quality.'' Id. at 876–77. The Court also found that certain aspects of the Code and the factors surrounding its implementation weighed against the delegation of power, including the lack of meaningful government review, the lack of adequate representation of citizens affected by the private owners' actions, the breadth of the delegation, and the big landowners' obvious interest in maximizing their own profits and minimizing their own costs.

The majority offered a strong opinion, detailing its legal reasoning and explaining the dangers of offering too much legislative power to private entities. By contrast, in her dissent, Justice Owen argued that, ''[w]hile the Constitution certainly permits the

Legislature to enact laws that preserve and conserve the State's natural resources, there is nothing in the Constitution that requires the Legislature to exercise that power in any particular manner,'' ignoring entirely the possibility of an unconstitutional delegation of power. Id. at 889. Her view strongly favored large business interests to the clear detriment of the public interest, and against the persuasive legal arguments of a majority of the Court.

When I asked her about this case at her hearing, I found her answer perplexing. In a way that she did not argue in her written dissent, at her hearing Justice Owen attempted to cast the FM Properties case not as, ''a fight between and City of Austin and big business, but in all honesty, . . . really a fight about . . . the State of Texas versus the City of Austin.'' Transcript at 69. In the written dissent however, she began by stating the, ''importance of this case to private property rights and the separation of powers between the judicial and legislative branches . . .'', and went on to decry the Court's decision as one that, ''will impair all manner of property rights.'' 22 S.W. 3d at 889. At the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case—property rights for corporations.

Another case that concerned me is the case of GTE Southwest, Inc. v. Bruce, 990 S.W.2d 605, where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. The rest of the Court held that three employees subjected to what the majority characterized as ''constant humiliating and abusive behavior of their supervisor'' were entitled to the jury verdict in their favor. Despite the Court's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain her difference of opinion on the key legal issue in the case—whether the behavior in evidence met the legal standard for intentional infliction of emotional distress.

Justice Owen contended that the conduct was not, as the standard requires, ''so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency . . .'' Id. at 621. The majority opinion shows Justice Owen's concurrence advocating an inexplicable point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

At her hearing, in answer to Senator EDWARDS' questions about this case, Justice Owen again gave an explanation not to be found in her written views. She told him that she agreed with the majority's holding, and wrote separately only to make sure that future litigants would not be confused and think that out of context, any one of the outrages suffered by the plaintiffs would not support a judgment. Looking again at her dissent, I do not see why, if that was what she truly intended, she did not say so in language plain enough to be understood, or why she thought it necessary to write and say it in the first place. It is a somewhat curious distinction to make—to advocate that in a tort case a judge should write a separate concurrence to explain which part of the plaintiff's case, standing alone, would not support a finding of liability. Neither her written concurrence, nor her answers in explanation after the fact, is satisfactory explanation of her position in this case.

In City of Garland v. Dallas Morning News, 22 S.W. 3d 351 (Tex. 2000), Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as based on a desire to reach a particular outcome. The majority upheld a decision giving the newspaper access to a document outlining the reasons why the city's finance director was going to be fired. Justice Owen made two arguments: that because the document was considered a draft it was not subject to disclosure, and that the document was exempt from disclosure because it was part of policy making. Both of these exceptions were so large as to swallow the rule requiring disclosure. The majority rightly points out that if Justice Owen's views prevailed, almost any document could be labeled draft to shield it from public view. Moreover, to call a personnel decision a part of policy making is such an expansive interpretation it would leave little that would not be ''policy''.

Quantum Chemical v. Toennies, 47 S.W. 3d 473 (Tex. 2001), is another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute. In this age discrimination suit brought under the Texas civil rights statute, the relevant parts of which were modeled on Title VII of the federal Civil Rights Act (and its amendments), the appeal to the Texas Supreme Court centered on the standard of causation necessary for a finding for the plaintiff. The plaintiff argued, and the five justices in the majority agreed, that the plain meaning of the statute must be followed, and that the plaintiff could prove an unlawful employment practice by showing that discrimination was ''a motivating factor.'' The employer corporation argued, and Justices Hecht and Owen agreed, that the plain meaning could be discarded in favor of a more tortured and unnecessary reading of the statute, and that the plaintiff must show that discrimination was ''the motivating factor,'' in order to recover damages.

The portion of Title VII on which the majority relies for its interpretation was part of Congress's 1991 fix to the United States Supreme Court's opinion in the Price Waterhouse case, which held that an employer could avoid liability if the plaintiff could not show discrimination was ''the'' motivating factor. Congress's fix, in Section 107 of the Civil Rights Act of 1991, does not specify whether the motivating factor standard applies to both sorts of discrimination cases, the so-called ''mixed motive'' cases as well as the ''pretext'' cases.

The Texas majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be ''a'' motivating factor. Justice Owen joined Justice Hecht in claiming that federal case law is clear (in favor of their view), and opted for a reading of the statute that would turn it into its polar opposite, forcing plaintiffs into just the situation legislators were trying to avoid. This example of Justice Owen's desire to change the law from the bench, instead of interpret it, fits President Bush's definition of activism to a ''T''.

Justice Owen has also demonstrated her tendency toward ends-oriented decision making quite clearly in a series of dissents and concurrences in cases involving a Texas law providing for a judicial bypass of parental notification requirements for minors seeking abortions.

The most striking example is Justice Owen's expression of disagreement with the majority's decision on key legal issues in Doe 1. She strongly disagreed with the majority's holding on what a minor would have to show in order to establish that she was, as the statute requires, ''sufficiently well informed'' to make the decision on her own. While the conservative Republican majority laid out a well-reasoned test for this element of the law, based on the plain meaning of the statute and well-cited case law, Justice Owen inserted elements found in neither authority. Specifically, Justice Owen insisted that the majority's requirement that the minor be ''aware of the emotional and psychological aspects of undergoing an abortion'' was not sufficient and that among other requirements with no basis in the law, she, ''would require . . . [that the minor] should . . . indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion.'' In re Doe 1, 19 S.W. 3d 249, 256 (Tex. 2000)

In her written concurrence, Justice Owen indicated, through legal citation, that support for this proposition could be found in a particular page of the Supreme Court's opinion in Planned Parenthood v. Casey. However, when one looks at that portion of the Casey decision, one finds no mention of requiring a minor to acknowledge religious or moral arguments. The passage talks instead about the ability of a State to, ''enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear,'' Casey at 872. Justice Owen's reliance on this portion of a United

States Supreme Court opinion to rewrite Texas law was simply wrong.

As she did in answer to questions about a couple of other cases at her hearing, Justice Owen tried to explain away this problem with an after the fact justification. She told Senator CANTWELL that the reference to religion was not to be found in Casey after all, but in another U.S. Supreme Court case, H.L. v. Matheson. She explained that in, ''Matheson they talk about that for some people it raises profound moral and religious concerns, and they're talking about the desirability or the State's interest in these kinds of considerations in making an informed decision.'' Transcript at 172. But again, on reading Matheson, one sees that the only mention of religion comes in a quotation meant to explain why the parents of the minor are due notification, not about the contours of what the government may require someone to prove to show she was fully well informed. Her reliance on Matheson for her proposed rewrite of the law is just as faulty as her reliance on Casey. Neither one supports her reading of the law. She simply tries a little bit of legal smoke and mirrors to make it appear as if they did. This is the sort of ends-oriented decision making that destroys the belief of a citizen in a fair legal system. And most troubling of all was her indicating to Senator FEINSTEIN that she still views her dissents in the Doe cases as the proper reading and construction of the Texas statute.

Last May, President Bush said that his standard for judging judicial nominees would be that they ''share a commitment to follow and apply the law, not to make law from the bench.'' Priscilla Owen's record, as I have described it today, does not qualify her under that standard for a lifetime appointment to the Federal bench.

The President has often spoken of judicial activism without acknowledging that ends-oriented decision making can come easily to ideological conservative nominees. In the case of Priscilla Owen, we see a perfect example of such an approach to the law, and I cannot support it.

As I said earlier, when the President sends us a nominee who raises concerns over qualifications or integrity or who has a misunderstanding of the appropriate role of a federal judge, I will make my concerns known. This is one of those times. In his selection of Priscilla Owen for the Fifth Circuit, the President and his advisors are trying to do to the Fifth Circuit what they did to the Texas Supreme Court. Plucked from a law firm by political consultant Karl Rove, Justice Owen ran as a conservative, pro-business candidate for the Texas Supreme Court, and she received ample support from the business community. She fulfilled her promise, becoming the most conservative judge on a conservative court, standing out for her ends-oriented, extremist decision making. Now, on a bigger stage, the President and Mr. Rove want a repeat performance: sending Justice Owen to a court one step below the Supreme Court of the United States, attempting to skew its decisions out of step with the mainstream.

Before and after he took office, President Bush said he wanted to be a uniter and not a divider, yet he has sent the Senate several nominees who divide the Senate and the American people. Over the last 14 months, the Judiciary Committee has exceeded the pace of recent years in approving more than six dozen of the President's judicial nominees—most of them, conservative Republicans. The Senate by now has confirmed 73 of them. This committee and the Senate have made the judgment that those nominees will fulfill their duties to act fairly and impartially. I urge the President to choose nominees who fit that profile, not the profile of Justice Owen.

The oath taken by Federal judges affirms their commitment to ''administer justice without respect to persons, and do equal right to the poor and to the rich.'' No one who enters a federal courtroom should have to wonder whether he or she will be fairly heard by the judge. Justice Priscilla Owen's record shows me that she has not fulfilled that commitment on the Supreme Court of Texas, and I cannot vote to confirm her for this appointment to one of the highest courts in the land.

IMPROVING THE GENETIC NEWBORN SCREENING PROGRAM

Mr. DEWINE. Mr. President, on August 1, along with my colleague from Connecticut, Senator DODD, introduced a bill designed to improve the Nation's current genetic newborn screening program. Our legislation would provide education grants for physicians and parents, as well as grants to States to improve follow-up and tracking of those children who receive a heelstick screening and receive a positive result for metabolic, genetic, infectious, and other congenital conditions that threaten their health and life.

Each year, newborn screening identifies an estimated 3,000 babies with conditions that would otherwise have had dire consequences. But despite their clear importance, our newborn screening systems are fragmented. Quite simply, all children do not have access to the same genetic tests. Where a child is born and what tests are offered in that State is what determines the tests a newborn receives. In my home State of Ohio, we test for 12 disorders, while right across the border in Kentucky, they test for only four disorders and in Pennsylvania, they test for five. In Massachusetts, however, newborns are tested for 29 disorders.

Furthermore, parents often are not sufficiently informed of the number of tests available in their state and what those tests can help accomplish. Physicians may not know to educate parents, or physicians may talk to parents too late in the birthing process for it to make a difference. Also, State health departments may not follow-up adequately with the parents of a child who receives a positive test result, and health departments may not have the capacity to effectively record or track a large number of positive results.

The bill we are introducing today would go a long way toward streamlining the current newborn screening system by offering states grants to accomplish the following: build and expand existing procedures and systems to report test results to individuals and families, and primary care physicians and subspecialties; coordinate ongoing follow-up treatment with individuals, families, and primary care physicians after a newborn receives an indication of the presence of a disorder on a screening test; ensure seamless integration of confirmatory testing, tertiary care, genetic services, including counseling, and access to developing therapies by participation in approved clinical trials involving the primary health care of the infant; and analyze collected data to identify populations at high risk, examine and respond to health concerns, recognize and address relevant environmental, behavioral, socioeconomic, demographic, and other factors.

This bill is a good start toward ensuring that all newborns receive equal access to genetic tests and that their follow-up care, if needed, is available and coordinated. The importance of these screenings cannot be overstated. It can mean the difference between life and death for a newborn. And that, is something we must address.

I ask my colleagues for their support.

ADDITIONAL STATEMENTS

FIESTA 2002 CELEBRATION

• Mr. LUGAR. Mr. President, as a lifelong supporter of cultural heritage events and friend of the Indianapolis Hispanic-Latino Community, I rise today to share with my colleagues my interest in, and strong support for, an important cultural event that will take place in Indianapolis on September 21.

For the 22nd year, Fiesta will be held on the American Legion Mall in downtown Indianapolis to celebrate Hispanic culture and heritage. This is the premier Hispanic cultural event for the State of Indiana.

Fiesta 2002 will highlight the music, food, and traditions of Hispanic culture and provide an educational opportunity for everyone to learn more about Hispanic traditions and understand the contributions Hispanics in Indiana have made to enrich and strengthen our community.

Attendees for this public event will have the opportunity to enjoy a wide range of activities that showcase the Hispanic traditions in music, history, art, and food, among many others. Information booths, contests, and speakers will be set up to encourage