we had a marginal tax rate of 94 percent to pay for it. In the Korean war, we had a marginal rate of 91 percent. In Vietnam, we had a 77 percent rate. So we paid for wars. But not this Congress; no, no, we are not going to go. That is their war. I do not know whether it is for oil, for democracy, whatever the arguments—get rid of Saddam—but one thing is positive, I say to the Senator from Alabama, this Congress is not going to go. We are going to give the bills to the poor GI who fights the war. I think it is a dirty shame. It is an embarrassment to me that I cannot even get a hearing and nobody to even talk about paying for the war.

This is a time of national sacrifice because it is a time of national commitment, but not a national commitment on the part of this particular war, I can tell you that now. I have a 1-percent tax proposed.

SOCIAL SECURITY

Let me talk about our friend, Alan Greenspan, the Chairman of the Federal Reserve. He came out last week and suggested Congress consider switching to an inflation measurement that would trim billions of dollars from all cost-of-living adjustments provided to the 46 million Social Security recipients.

He said:

Lawmakers should consider trimming the benefits, raising the retirement age, or other ideas before raising the payroll tax.

Chairman Greenspan also debunked the idea advanced by some conservatives that faster economic growth alone would be able to deal with the shortfalls in the Government's two biggest benefits.

He finally came out against this so-called voodoo or economic growth. The buzzword is growth. It is cut the taxes to grow the economy. We can only go back to what Mr. Greenspan said in 1983 in his annual report from the National Commission on Social Security Reform, section 21. I ask unanimous consent to print that section of the report in the RECORD.

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

REPORT OF THE NATIONAL COMMISSION ON SOCIAL SECURITY REFORM—JANUARY 1983

SOCIAL SECURITY AND THE UNIFIED BUDGET

(21) A majority of the members of the National Commission recommends that the operations of the OASI, DI, HI, and SMI Trust Funds should be removed from the unified budget. Some of those who do not support this recommendation believe that the situation would be adequately handled if the operations of the Social Security program were displayed within the present unified Federal budget as a separate budget function, apart from other income security programs.

Before fiscal year 1969, the operations of the Social Security trust funds were not included in the unified budget of the Federal Government, although they were made available publicly and were combined, for purposes of economic analysis, with the administrative budget in special summary tables included in the annual budget document. Beginning then, the operations of the Social Security trust funds were included in the unified budget. In 1974, Congress implicitly approved the use of a unified budget by including Social Security trust fund operations in the annual budget process. Thus, in years when trust-fund income exceeded outgo, the result was a decrease in any general budget deficit that otherwise would have been shown—and vice versa.

The National Commission believes that changes in the Social Security program should be made only for programmatic reasons, and not for purposes of balancing the budget. Those who support the removal of the operations of the trust funds from the budget believe that this policy of making changes only for programmatic reasons would be more likely to be carried out if the Social Security program were not in the unified budget. Some members also believe that such a procedure will make clear the effect and presence of any payments from the General Fund of the Treasury to the Social Security program. (Under present procedures, such payments are a ''wash'' and do not affect the overall budget deficit or surplus.)

Those who oppose this recommendation believe that it is essential that the operations of the Social Security program should remain in the unified Federal budget because the program involves such a large proportion of all Federal outlays. Thus, to omit its operations would misrepresent the activities of the Federal Government and their economic impact. Furthermore, it is important to ensure that the financial condition of the Social Security program be constantly visible to the Congress and the public. Highlighting the operations of the Social Security program as a separate line function in the budget would allow its impact thereon to be seen more clearly.

Mr. HOLLINGS. Mr. President, section 21 said to put Social Security off budget in trust, not to be expended on anything other than Social Security. We spend Social Security trust funds on any and everything but Social Security. Has Mr. Greenspan thought of that solution: Just do not spend the Social Security taxes on every endeavor that we could possibly imagine but Social Security?

I had a dickens of a time trying to get that written into law. It took me 7 years, and finally on November 5, 1990, George Walker Herbert Bush signed into law section 13301 of the Budget Act. It is the law of the land: You shall not report from the Congress or the President a budget including Social Security. But we do, and Alan Greenspan started that nonsense back in the eighties because he wanted to cover taking those moneys to go along with what Vice President Bush at that particular time called voodoo.

Let me get up to voodoo 2 because we ought to understand, when this recession in the economy started. I am not an economist, but I am a politician. I have been chairman of the Budget Committee. I have worked with Alan Greenspan. I went over in 1980, right after the elections, to brief President-elect Reagan on the budget. We walked in the snow over to the Blair House. I will never forget it. President Reagan said he was going to balance the budget in 1 year, and after the briefing he said: Oops, I never realized how bad it was. It is going to take me 3 years. That is when we went from 1-year budgets to 3 years, and then under Gramm-Rudman-Hollings we went to 5 years, and later under Vice President Bush we went to 10 years. I suggest for this irresponsible Congress, let's go to 20. You can project anything and just keep on spending because that is exactly what we are doing.

But let's jump back to September of the year 2000 when Governor Bush, now President Bush, was running. He said he was going to cut taxes. I knew how we had just gotten the best 8 years of economic growth in the history of the United States: with an increase in taxes. We were on the tail end of our recovery. We still had a deficit. We were trying to work toward a balanced budget, and I will give my colleagues the facts and figures.

The point is, when he talked about cutting taxes, I thought, oh, heavens, we can't start that again; we are just getting back into the black. We had not gotten into the black in September 2000 nor in November, the Friday after the Tuesday election, when Vice President nominee CHENEY, our good friend, said: Yes, that is exactly what we are going to do—cut taxes. When Vice President CHENEY made that statement, go back and look at the market in October, November, December, and into January.

The Republicans are trying to say the recession started in March 2000. No, it started in the fall of 2000 because of this tax cut idea and running up these enormous deficits and running up the interest costs and the borrowing.

So what happened was, on January 25, Alan Greenspan appeared before the Budget Committee. What did the gentleman say? We were paying off too much debt. When he said we were paying off too much debt, that was right, title, and interest to this young new President, George W. Bush, coming into office for him to spend up to the ceiling. On February 27, I'll be darned if he didn't do just that. The new President came before the Senate in a joint session on February 27 and said: Here is my budget. I have $2.6 trillion to protect Social Security. I have $2 trillion for domestic and defense programs, and that leaves another $1 trillion for unforeseen circumstances.

We had an unforeseen circumstances on September 11, later that year, but let's go down now and find out when this recession started and when we were really in the black and in the red. I have here the public debt to the penny as reported by the Secretary of the Treasury. The latest we have—February 27, 2003—is $218 billion. That is this fiscal year—including September, October, November, December, January, and February, we got this country another $218 billion in debt.

I ask unanimous consent to have this printed in the RECORD.

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

The debt to the penny

	Amount
Current:	
2/27/2003	$6,446,165,774,125.26
Current month:	
2/26/2003	6,445,970,533,267.53
2/25/2003	6,446,004,668,324.03
2/24/2003	6,446,038,803,864.15
2/21/2003	6,446,140,296,660.54
2/20/2003	6,446,175,354,465.78
2/19/2003	6,442,718,474,145.91
2/18/2003	6,437,926,287,364.49
2/14/2003	6,414,086,191,317.72
2/13/2003	6,414,860,990,193.10
2/12/2003	6,400,775,460,992.07
2/11/2003	6,403,775,445,922.86
2/10/2003	6,400,363,175,585.80
2/7/2003	6,398,607,223,793.01
2/6/2003	6,401,330,573,005.21
2/5/2003	6,387,332,567,273.92
2/4/2003	6,388,239,504,295.45
2/3/2003	6,379,432,578,400.38
Prior months:	
1/31/2003	6,401,376,662,047.32
12/31/2002	6,405,707,456,847.53
11/29/2002	6,343,460,146,781.79
10/31/2002	6,282,527,974,378.50
Prior fiscal years:	
9/30/2002	6,228,235,965,597.16
9/28/2001	5,807,463,412,200.06
9/29/2000	5,674,178,209,886.86
9/30/1999	5,656,270,901,615.43
9/30/1998	5,526,193,008,897.62
9/30/1997	5,413,146,011,397.34
9/30/1996	5,224,810,939,135.73
9/29/1995	4,973,982,900,709.39
9/30/1994	4,692,749,910,013.32
9/30/1993	4,411,488,883,139.38
9/30/1992	4,064,620,655,521.66
9/30/1991	3,665,303,351,697.03
9/28/1990	3,233,313,451,777.25
9/29/1989	2,857,430,960,187.32
9/30/1988	2,602,337,712,041.16
9/30/1987	2,350,276,890,953.00

THE DEBT TO THE PENNY AND WHO HOLDS IT

[Debt held by the public vs. intragovernmental holdings]

	Debt held by the public	Intragovernmental holdings	Total
Current:			
02/27/2003	$3,683,531,753,393.98	$2,762,634,020,731.28	$6,446,165,774,125.26
Current month:			
02/26/2003	3,681,995,211,660.54	2,763,975,321,606.99	6,445,970,533,267.53
02/25/2003	3,680,546,956,577.64	2,765,457,711,746.39	6,446,004,668,324.03
02/24/2003	3,683,950,348,867.13	2,762,088,454,997.02	6,446,038,803,864.15
02/21/2003	3,684,518,370,236.10	2,761,621,926,424.44	6,446,140,296,660.54
02/20/2003	3,684,115,204,633.82	2,762,060,149,831.96	6,446,175,354,465.78
02/19/2003	3,681,097,230,200.83	2,761,621,243,945.08	6,442,718,474,145.91
02/18/2003	3,680,397,155,161.57	2,757,529,132,202.92	6,437,926,287,364.49
02/14/2003	3,662,059,553,599.40	2,752,026,637,718.32	6,414,086,191,317.72
02/13/2003	3,661,984,456,977.19	2,752,876,533,215.91	6,414,860,990,193.10
02/12/2003	3,648,984,143,809.81	2,751,791,317,182.26	6,400,775,460,992.07
02/11/2003	3,649,088,081,850.16	2,754,687,364,072.70	6,403,775,445,922.86
02/10/2003	3,648,737,478,114.74	2,751,625,697,471.06	6,400,363,175,585.80
02/07/2003	3,648,857,135,353.53	2,749,750,088,439.48	6,398,607,223,793.01
02/06/2003	3,648,874,717,654.07	2,752,455,855,351.14	6,401,330,573,005.21
02/05/2003	3,636,289,414,701.92	2,751,043,152,572.00	6,387,332,567,273.92
02/04/2003	3,635,972,465,674.76	2,752,267,038,620.69	6,388,239,504,295.45
02/03/2003	3,635,739,981,303.79	2,743,692,597,096.59	6,379,432,578,400.38
Prior months:			
01/31/2003	3,636,978,106,813.83	2,764,398,555,233.49	6,401,376,662,047.32
12/31/2002	3,647,939,770,383.73	2,757,767,686,463.80	6,405,707,456,847.53
11/29/2002	3,649,352,539,575.36	2,694,107,607,206.43	6,343,460,146,781.79
10/31/2002	3,586,523,556,148.57	2,696,004,418,229.93	6,282,527,974,378.50
Prior fiscal years:			
09/30/2002	3,553,180,247,874.74	2,675,055,717,722.42	6,228,235,965,597.16
09/28/2001	3,339,310,176,094.74	2,468,153,236,105.32	5,807,463,412,200.06
09/29/2000	3,405,303,490,221.20	2,268,874,719,665.66	5,674,178,209,886.86
09/30/1999	3,636,104,594,501.81	2,020,166,307,131.62	5,656,270,901,633.43
09/30/1998	3,733,864,472,163.53	1,792,328,536,734.09	5,526,193,008,897.62
09/30/1997	3,789,667,546,849.60	1,623,478,464,547.74	5,413,146,011,397.34

Mr. HOLLINGS. Mr. President, on January 25, 2001, when Chairman Greenspan spoke, we were $65 billion in the red according to the Secretary of the Treasury. On February 27, 2001, when the distinguished new President gave his speech before the Senate—we were $53 billion in the red.

On April 15, 2001, taxpaying day, we were $94 billion in the red. We had collected all that income tax on April 15 and on April 30, 2001, according to the Secretary of the Treasury, we had a surplus. And remember, they had been babbling all during the Christmas holidays and January and February of $5.6 trillion in surplus money, that we are paying off too much debt. There was all kinds of surplus talk.

Let's go to May 1, 2001. We were $23 billion in the black. On June 1, we were $4 billion in the black. But on June 7, the President signed the $1.5 trillion tax cut, voodoo 2—we had voodoo 1, so he gave us voodoo 2. And what happened? What happened after June 7? By June 28, we were $52 billion in the red, and on September 10, one day before the tragic September 11, we were $99 billion in the red. We only had 20 more days of that fiscal year. If you go into their lingo, their little song and dance routine, they are trying to say they inherited a recession—they did not cause it, but they inherited a recession. They tell you we had corporate corruption, and we had 9/11, and on and on, and everybody is beginning to believe it. They have said it again and again.

The truth is, as I've illustrated with these numbers, George Bush caused this economic downturn, and it is going to stay in a downturn with his newest tax cutting scheme, voodoo 3. Whoever heard of cutting taxes on the dividends, the marriage penalty, and all of these other things they have been coming up with and saying it is going to stimulate the economy? They know there is enough stimulus. They are under subterfuge, hiding, camouflaging tax reform under the auspices of a stimulus. The truth is, on September 30 last year, we ended up $428 billion in the red. President Bush, by his own budget, without the costs in Iraq, has already projected a $554 billion deficit this year, and his budget proposal for next year is $569 billion in the red. That is $1.5 trillion that we have not paid for, that we are infusing as a stimulus to the economy. We know we have to get ourselves on track as quickly as we possibly can.

I ask unanimous consent that section 13301 be printed in the RECORD.

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

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in

* * * *

We said it is the law now we are not supposed to use Social Security, and they continue to do so. What we really have, in essence, is Enron accounting.

Why do I call it Enron accounting? Well, turn to page 1 of the budget. We will find on page 1 the Bush Administration saying they firmly believes in controlling the deficit and reducing it as the economy strengthens and our national security interests are met. They go on to say that compared to the overall Federal budget and the $10.5 trillion national economy, the budget gap is small by historical standards.

What did Kenny boy Lay do? The same thing. On page 1, he made his stockholders feel good, by saying the company and the corporation are doing fine.

What is the Bush Administration doing? Trying to make all the taxpayers feel good by saying this deficit is small on page one.

But if we turn to page 332 in the Historical Tables, we will see the overall deficit is $554 billion—not what they had, $159 billion on page 1. It is actually $554 billion. So rather than a deficit of 2.7 percent of the GDP, it is 5 percent. In fact, it is 5.2 percent to be accurate.

If they are trying to talk in historical terms, let's talk—we are complaining about everybody in Europe, and we are saying in Europe the trouble with those folks is they are not being responsible. I say to the Senator from Vermont, on page 117 of the same budget tables, we find out that the debt is 64.8 percent of the GDP.

Under the Maastricht Treaty, one cannot be a member of the European Community unless their annual deficit is less than 3 percent. Ours is up to 5 percent. They can be subject to fines if their debt exceeds 60 percent of the GDP. But by the Bush Administration's own facts and figures ours is 64.8 percent. We could not even become members of the European Community, but we are running around criticizing them about not doing this and not doing that.

Let me say about the French—I fought under the French, and they were brave in World War II. Do not give me this stuff. They had a heyday with the PR thing on the weekend shows about the French, that we do not care, we will go in any way. But the main thing is to realize that we have worked ourselves into a situation, as Senator DORGAN says, where it does not make sense to produce in the United States of America.

As politicians, Republican and Democrat, we say: Before you open up a manufacturing company you have to have a minimum wage, clean air, clean water, Social Security, Medicare, Medicaid, safe working place, safe machinery, plant closing notice, parental leave. Or you can go to China and open your plant their for wages of 58 cents an hour, and there is none of that.

I asked a high-tech friend of mine on the west coast, when he was expanding, to give us a chance and come back to South Carolina. He said he does not produce anywhere in the United States. He said he produces in China for 10 percent of what it would cost in California.

That is the whole situation. The Secretary of Commerce has the duty of listing 500 critical items to our national security. Senator, we have a $5 billion deficit in the balance of trade in those critical items. We will not be able to go to war the next time because we are not producing. We will have to call other nations up and ask them to please send the goods to us so we can gear up and get ready to go to war.

If my friends want to stimulate the economy, let's give $30 billion back to the States. We passed Leave No Child Behind, but we left the money behind. The States are really strained paying educational budgets. We passed the Disabilities Act, but we have never funded it. Now we have homeland security, the first responders. I fought like the dickens to get the seaport security bill funded for a whole year. I got the authorization, but I could not get the money.

The States need it back at the ports, they need it back at the public schools. They need the money. While we think we will stimulate the economy to create jobs, they are doing everything to downsize, fire, let the teachers go, and creating unemployment as fast as we are trying to create employment.

The best stimulus, money that will have to be spent one way or the other, is $30 billion back to the Governors. That is not partisan because the majority of the Governors are Republican. I am trying to help reelect those Republican Governors.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Alabama is recognized under the previous order.

Mr. SESSIONS. I appreciate the comments of Senator HOLLINGS, and I understand clearly, and I am glad he speaks with no accent, which I appreciate.

He has always been very rigorous on this issue. I appreciate that. We need to watch spending around here and need to watch it in all areas. Of course, the amount of money we are spending on this war—it is estimated from $40 to $95 billion—compared to the economic loss and the internal expenditures we have had to put out as a result of the attack of September 11, is very small. So we have to do something and I don't think the Senator suggests otherwise there.

We are here talking about one of the finest nominees to come before the Senate, Miguel Estrada, for the Circuit Court of Appeals for the DC Circuit. Miguel Estrada is a stunningly qualified person. He came here at age 17 from Honduras, top of his class at Columbia, magna cum laude, Phi Beta Kappa, on to Harvard Law, editor of the Harvard Law Review, clerk for a Second Circuit Court of Appeals, the sister court to the DC court he would be sitting on. He served in the Solicitor General's Office of the Justice Department where he wrote appellate briefs and argued cases before the United States Supreme Court. He has been at one of America's greatest law firms since.

He received the highest possible ratings of his supervisors in the Department of Justice almost his entire time. In the Department of Justice he was being supervised by President Clinton's supervisors. They gave him the highest rating they could give. They even noted how he was disciplined and followed all the policies and procedures of the Department of Justice.

The American Bar Association checked him out. They interviewed lawyers on the other side of his cases; they interviewed judges before whom he practiced; they talked to friends. They came up with a rating, unanimously ''well qualified,'' the highest possible rating the American Bar Association gives. They did not give it by a split vote but unanimously. That is very rare. They do not do that very often. He is exceptionally well qualified.

I heard his testimony before the Senate Judiciary Committee. I thought he was responsive and intelligent and courteous and kept his composure on the tough questioning. Having argued 15 cases before the Supreme Court of the United States places him in a very select group of lawyers. I am sure there are not more than 20 practicing lawyers in America today who have argued 15 cases before the Supreme Court of the United States. You are not selected for that unless people believe you are very good at your business. The average guy cannot walk in and argue a case before the Supreme Court under normal circumstances. We have an exceptionally qualified nominee.

What is this brouhaha all about? What is causing us to be subjected to the first filibuster in the history of the United States involving a nominee for a circuit court of appeals judge, or a district court judge for that matter, in the history of this country? We are not able to identify a single active filibuster, as we have seen today, on a nominee for circuit court of appeals or for the district court. It is stunning this is so in light of the fact we have an individual who lived the American dream, who has been a success in every category of life, whose integrity has never been questioned, and whose professionalism and skill is doubted by no one.

I ask, what is it all about, Alfie? What is this about? The real deal here is the question of the role of judges: To what extent are they empowered to be activists? Should they be able to utilize and employ their own best judgment about matters and read that into the statutes and the Constitution they interpret, or should they be bound by the plain meaning of those statutes? This is a fundamental question.

There is in the law schools of America, in many of the outspoken professors and proponents of law in America, a belief that judges have a duty to act

and to make decisions and even so act politically. In fact, they say it is a myth and a falsehood to suggest and even to believe that judges are above politics. They say it is all politics. Why do they say that? This is part of a dangerous trend in America. Is politics in everything?

The Critical Legal Studies Group that has been afoot in law schools over a number of years believes you cannot tell anything about law; that you can take words and statutes and they can mean anything you want them to mean, and they believe those laws were just written by those in power to oppress those not in power. They do not believe there are rules of the game all of us must live by that are critical to our economic development. They believe it is all politics, it is all power, and there is no truth and there is no order fundamentally. Some call it deconstructionism, and others call it the trends in America as opposed to modernism, the idea that there is no truth; one person's opinion is just as good as another; We can say what we want; I'm OK, you're OK. That kind of idea is really at the heart of some of the problems we are having.

I often tell the story of Hodding Carter, who used to work for President Carter. He was on Meet The Press, where he used to be a regular member. He made a comment the other day where he said we liberals have to admit it, we are asking the courts to do for us that which we can no longer win at the ballot box. That is basically what President Bush has been unhappy with. That has been the concern he has expressed with the legal system. He simply wants judges who will follow, first, the Constitution, and then the statutes and lawful acts that are enacted pursuant to the Constitution. If the lawful acts that are adopted violate the Constitution, the Constitution trumps and the court should say so. The Constitution controls much of what goes on in this country, and it ought to be the No. 1 thing. So we follow that.

It is academic when we talk about those words, but there are various cases that come along that point out the matter to us very clearly, none more significant than the ruling in California over the Pledge of Allegiance, striking down the pledge as being unconstitutional because it had the words in it ''under God.'' They said that was an establishment of a religion that is prohibited by the Constitution; that these two words established a religion.

That is beyond my comprehension. It appears to be clearly contrary to the view of the U.S. Supreme Court, although the U.S. Supreme Court, I will admit, tends to be inconsistent on this issue.

I remember when that happened it caused quite a stir, particularly on both sides of the aisle here. But I noticed my friends across the aisle were particularly concerned about it and were vocal. So after the panel in California struck down the Pledge of Allegiance, we met that day. People came down on the floor and spoke out. The majority leader at that time, Senator TOM DASCHLE, said:

> But this decision is nuts. This decision is just nuts.

He talked about it a little bit there. He gave up the floor, and my good friend Senator REID from Nevada, the assistant Democratic leader, spoke and this is what he said:

> I have the good fortune that two of my sons have been law clerks for the chief judge of the Ninth Circuit.

That is where these panel members were, they were a part of the ninth circuit.

> In fact, one of my sons was his administrative assistant. He was a judge from Nevada, served on the very prestigious Ninth Circuit. I have had calls from my sons today. They are embarrassed about what has taken place in that Ninth Circuit. They said: Dad, don't worry about it because the court will meet en banc [the whole court will] and reverse it. These are two of the most liberal members on the Court. They come up at random. It was by chance Goodwin and Reinhardt were thrown together [on this panel] . . .

But it wasn't Goodwin and Reinhardt on the panel. Mr. REID was in error about that. But Mr. REID said:

> I have great faith the court will reverse itself when they sit en banc.

Well, I had hoped so, too. But I spoke on that day. I made clear I was not at all sure the full Ninth Circuit Court would reverse that opinion because I have been studying the Ninth Circuit. I have observed its irrational and activist behavior for some time. I have noted its problems. I was not at all certain it would be reversed. In fact, I said as much. I said:

> I hope on full rehearing en banc the court will reverse the opinion. I am not absolutely sure it will because there are others on the court I have no doubt will join in this opinion.

I made other references to that. So the Ninth Circuit was—it was a test here. Everybody says don't worry about this random opinion.

I have been reminded that Goodwin and Reinhardt were on that panel, along with another judge. It was a three-judge panel.

So I wondered, will they reverse it? The way it works is if a panel of a larger court, the 24 judges on the Ninth Circuit, if a three-judge court rules and that opinion is significant and may implicate the rest of the law, and the full court, 24 judges, might disagree, they have an en banc hearing, they review the panel's decision, and they render an opinion, either affirming it or not affirming it.

What happened here just Friday was that the Ninth Circuit decided not to rehear the ruling made by three-judge panel—in effect, affirming the opinion striking down the constitutionality of the Pledge of Allegiance of the United States, not a totally surprising thing to me.

It is surprising that we are this far along. It is surprising we have gone this far in distorting the original intent of our Constitution concerning the separation of church and State and what that actually means.

People say it says we must have a wall of separation between the church and State. The Constitution never said that. Thomas Jefferson said that late in his life, long after he had left public office. He wrote the Baptist Association and used that phrase—there should be a wall of separation between church and State. No one knew precisely what he meant. It was never ratified by the people. He was not even at the Constitutional Convention, Jefferson wasn't, when the Constitution was written.

What we must do to determine what the Founding Fathers thought is look at that document, look at the Constitution itself. They debated the issue. They were concerned about it. Virginia had an established church. It was the Episcopal Church, the Anglican Church, the Church of England. The Americans didn't like that. They said, We are going to put in our Constitution; no one religion is going to be given a predominance over the other. So they wrote the first amendment and they said Congress—that's us, the U.S. Congress—shall make no law respecting an establishment of a religion nor prohibiting the free exercise thereof.

They forget all about the free exercise clause. They simply say everything that even mentions God in public life is an establishment of a religion. That is a misreading of the Constitution.

Why they have it in their heads that these things should be so closely scrutinized and should be so scrutinized by the courts and struck down by the courts is beyond me. We have been on a trend for a little over 50 years. It was not a function or a problem for the first 150 years of this country's existence, but in recent years it has developed in that way.

As a result of the history of the Supreme Court rulings over the last 50 years, there is a real ambiguity concerning the meaning of the separation of church and State.

I am going to show how I think activism plays a role in these decisions. People make out it does not make any difference here what kind of judges we have on courts, unless they happen to be judges who show restraint, who believe in following the law. They get attacked by our friends over here. But judges who advocate utilizing law and judicial opinions as a method to carry on a political agenda, they are quite all right. Then, when they strike down the Pledge of Allegiance, they run down here and say how awful it is. ''We are just shocked.'' And it is the judges and the philosophy of law that supports them that has led us to this point.

Let me just read what Judge Paez said one time in a written article. Judge Paez has been referred to as a judge who was not fairly treated here. He was confirmed. Thirty-nine Senators voted against him. He does sit on

the Ninth Circuit Court of Appeals today. And from what I can tell from this opinion, he joined in the opinion affirming the striking down of the Pledge of Allegiance.

So this is what he wrote about his philosophy as a judge. He said it includes: ''an appreciation of the courts to act when they must, when the issue has been generated as a result of the failure of the political process to resolve a certain political question. Because in such instance,'' he says, ''there is no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process.''

Do you see what Judge Paez said there? And I opposed his nomination for several reasons. But this was a core reason. What he said was, if the legislature does not act on something we enlightened ones think they should act on, then the courts are empowered to act.

You show me where that is in the Constitution. Let's put it really simply: When a legislature does not act on a matter, that represents a decision of a legislature. It decided not to act. That is a decision of that legislative branch just as certainly as if they had voted to make a change.

Legislatures are not required to act. If they do not do something that judges think ought to be done, where does it become the idea that judges can impose that by reinterpreting the meaning of the statutes and words of the Constitution to impose their agenda? That is a big deal for me.

Now, Judge Reinhardt wrote a part of this recent opinion on the Pledge of Allegiance. Let me tell you what he said. I just picked this up. It jumped right out at me because I am sensitive to this issue. I have to run for election. I have to go back to Alabama and defend what I did and what I voted on, just as the Presiding Officer did in his State. We have to defend what we do. We are accountable.

But judges are given lifetime appointments. Their position is for as long as they live, with good behavior. They would have to virtually be convicted of a felony before they could be removed from office. They can hold their position for as long as they want to hold it. And sometimes they hold it for longer than their health and ability.

But I want to make clear one thing: That most of our Federal judges do an excellent job, and most of them do show restraint. But there has been a continual battle over this philosophy, that you can make statutes say whatever you want them to say, and ''good'' judges should deliberately use their power to effect the public good as some group of people, whoever they are, think they should.

So there was some political uproar over the striking down of the Pledge of Allegiance, and Judge Reinhardt, on the Ninth Circuit, said we ought not to pay attention to that. But then he said:

> This is not to say that Federal judges should be completely sequestered from the attitudes of the Nation we serve. Even though our service is accomplished not through channeling popular sentiment but through strict adherence to constitutional principles, the Constitution contemplates occasions when we must be responsive to long-term societal trends when determining, for example, that which is cruel and unusual.

So the court says they have been empowered now to determine ''long-term societal trends,'' and that they can use those societal trends now to go back and take words such as ''cruel'' and ''unusual,'' and give them a new meaning.

Let's talk about that very one. That is the first one he mentioned. I think it is a good one for us to talk about because cruel and unusual punishment is prohibited by our Constitution. You cannot impose cruel and unusual punishment.

A number of years ago, we had two members of the Supreme Court—they are no longer there; both are deceased now—Justice Brennan and Justice Marshall, who concluded that due to evolving social trends, cruel and unusual punishment meant we should not have the death penalty. And they dissented on every single case that came before them imposing death because they believed it violated the constitutional provision concerning cruel and unusual punishment—a breathtaking position to take. I call it the high water mark of judicial activism.

Where did they get this idea there had been evolved standards? It was not from polling data, because the American people overwhelmingly favored the death penalty. It was not from the legislative actions of legislatures around the country, because very few had eliminated any death penalty statutes over the years. In fact, it was a law in a majority of the States in the country. It was a law in the United States of America. So I do not know where they came up with this idea.

They did not like it. Justice Brennan and Justice Marshall decided in their heart that America ought no longer to have a death penalty, so they set about combing the Constitution, and they came up with the idea that it was cruel and unusual.

The Constitution has to be fairly interpreted. It said: cruel and unusual. Even if you considered it cruel, was it unusual? Every State and every Colony in America and the British Empire had the death penalty at the time the Constitution was written.

Within the very corners of the Constitution itself are multiple references—six or more, as I recall—to the death penalty. It talks about capital crimes. It talks about that you cannot deprive one of life, liberty, or property. How do you deprive them of life except by the death penalty without due process of law?

So this was thunderous. So we have this judge voting to strike down the Pledge of Allegiance, saying that he is empowered to utilize ''long-term societal trends.''

I guess that is the way the EU votes. Maybe we ought to take a vote in the UN. Is that what we want to do? Let's take the EU, and we will let the Europeans decide what our societal trends are.

I will tell you one thing: The murder rate in Great Britain is going through the roof. And since the death penalty has come back into fashion in America, the murder rate has been plummeting. Thousands of people, on a percentage basis, today are alive, not murdered, because of the crackdown on violent crime in this country. I do not think anyone can dispute that. He talks about also, ''this broader long-term social conscience'' should guide us in deciding how to interpret statutes. Well, of course, that is bogus. Who empowered this lifetime-appointed person to do that?

See, that is an antidemocratic act. Judges, by being given lifetime appointments, are unaccountable. They serve a great function in that they can enforce the law, even though it might be, in the short term, unpopular. But we depend on them very deeply. We depend on them to show restraint, to not impose their views, but to honestly and fairly interpret the law.

We have some real problems here with the Supreme Court, too. The Supreme Court is very confused about the opinions on separation of church and state. But they never went this far.

In fact, according to Judge O'Scannlain, who wrote a dissenting opinion from the refusal of the court to even consider the matter en banc, Justice O'Scannlain details at least four references in previous Supreme Court opinions in the line of cases on which they relied to strike down the school Pledge of Allegiance recitation as affirmatively blessing or okaying the Pledge of Allegiance.

He quotes a number of those cases. Justice O'Connor and others have made that quite clear. So the question is, Does this phrase, ''under God,'' in the Pledge of Allegiance establish a religion or is it a religious act?

Justice O'Scannlain says: Common sense would seem to dictate otherwise, as the public and political reaction should show and make clear. If reciting the pledge is truly a religious act in violation of the establishment clause, then so is the recitation of the Constitution itself or the Declaration of Independence.

We hold these truths to be self-evident, that all people are created equal. They are endowed by their Creator with certain inalienable rights.

That is not something we earned here on Earth, but part of the philosophy of the founding of our country is in the heart of the most famous words in the Declaration of Independence. ''Without our aid He did us make.'' That is how we got here.

That is what a majority of the American people believe. Some 93 percent believe in God. They are not trying to impose their will on everybody. But

they do not believe, and I do not believe, the Constitution prohibits any reference in the public sphere to a higher being.

He goes on and says: Are we going to eliminate the Constitution, which makes references to God, the Declaration of Independence, the Gettysburg Address, which uses the phrase ''under God''? Are we going to prohibit that? The national motto, ''In God We Trust''? How about those words right up there, ''In God We Trust,'' in letters 6 inches high? Are they going to come down here with a chisel? I guess we will bring our friends from the Ninth Circuit over here with a chisel and let's see them chop away at that.

That doesn't make sense, does it? But that is what we have in this opinion. How about the national anthem? Justice O'Scannlain continues:

> Such an assertion would make hypocrites out of our founders and would have the effect of driving any and all references to our religious heritage out of our schools and eventually out of our public life.

I don't think that is an exaggeration at all.

How are we going to stop this?

In this Senate, we have the odd event that we have a paid Chaplain, as we have in the military. Our Chaplain comes in before we start the day, and we have a prayer. I am surprised they haven't sent the 82nd Airborne over here from across the street to stop that. They begin every session of the Supreme Court of the United States with the words: ''God save these United States and this honorable court.'' Every court I have been in uses those words. ''God save these United States and save this honorable court'' is what the clerk says when he calls the court to order all over America today. But children in the Ninth Circuit, the largest circuit in America, including some 9 million schoolkids, are prohibited now from saying the Pledge of Allegiance.

This opinion was written, although I am not sure legally how much it meant, but after this Congress voted on the matter a few months ago. If Justice Reinhardt believes his evolving social consciousness has gotten to the point that America no longer wants to say ''under God,'' he ought to listen to his elected representatives because right after it happened, we voted by 99 votes last June on the floor of this Senate to reaffirm the Pledge of Allegiance and the words ''under God.'' Every Senator in here voting that day voted for it. Maybe one didn't or one was absent. It is impossible for me to believe that they think this is a result of any societal evolution that causes this.

Justice O'Scannlain goes on and talks about the Engel v. Vitale case which eliminated prayer in schools, the first such case. They said they could not say a prayer written by the State. They said that was inconsistent with the establishment clause. The State wrote a prayer, and the kids were supposed to say it. They could refuse to, but they said it, and they said that was too much. That was the establishment of a religion effect. That could be something we could debate, but certainly there is some basis for that reasoning.

Then he goes on to note, in a footnote, the court said this in Vitale:

> There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York had sponsored [by mandating a State prayer.]

Then the next case in this line of cases came, Abbington School District v. Schempp. They required in Pennsylvania that at least 10 verses from the Holy Bible shall be read without comment at the opening of every public school each day. I guess they would probably put them in jail today for even expressing that. So they read the bible verses every day in the school. This was followed by a recitation of the Lord's Prayer, and finally the class would recite the Pledge of Allegiance. The court struck down the Bible reading and the practice of reciting the school prayer as a State-proscribed religious ceremony but said nothing at all about the Pledge of Allegiance. Why didn't they strike that down?

Here we have the Ninth Circuit going off on a tangent, clearly by implication contrary to the views even of the U.S. Supreme Court, which have gone too far in their hostility to religious expression. Even Justice Brennan, who I noted earlier was the leader of the activist group at the high water mark of activism, said this in that case:

> For Justice Brennan, ''religious exercises in the public schools present a unique problem'' but ''not every involvement of religion in public life violates the Establishment Clause.'' He warned that ''[a]ny attempt to impose rigid limits upon the mention of God . . . in the classroom would be fraught with dangers.'' Specifically, he wrote that ''[t]he reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains illusions to this historical fact.''

Historically, it is a fact that we believe in this country, or most Americans believe, this country was founded under God.

Then we had one of the more bizarre cases that came out of Alabama. Apparently out of pique, the Supreme Court became angered that the State of Alabama passed a law that prescribed a moment of silence or meditation before each day as school commenced. Can you imagine that? How horrible this is. It took the attention of the U.S. Supreme Court in Wallace v. Jaffree, 1985. It dealt with the constitutionality of an Alabama statute authorizing a 1-minute period of silence in public schools for ''meditation or voluntary prayer.''

The Supreme Court said that was unjustified and struck that down. What a ridiculous opinion that was. When I was a lawyer practicing before courts, I never said those kinds of words about courts. I took my lumps if I didn't agree with opinions, and I accepted the rulings of the court. I think we ought to be respectful. Here I am in a coequal branch, and I am an elected politician now and, I am telling you, there is no basis for that opinion.

So the Supreme Court is all confused about this. Some of the problems in the Ninth Circuit are due to their confusion. It is time for them to straighten up and figure this thing out and give us decent principles that will guide us. It is clear under Supreme Court law today that conducting a formal religious observance conflicts with the subtle rules pertaining to prayer and the religious exercise of students. Prayer was considered an overt religious exercise and that ''prayer exercises in public schools carry a particular risk of indirect coercion.''

But the Court, in a third case, Lee v. Weisman, discussed this very issue again. It took pains in the Lee case, which is the last of the cases I am citing here. The Court took pains to stress the confines of its holding; that is, how the holding was limited, concluding that ''we do not hold that every State action implicating religion is invalid if one or a few citizens find it offensive,'' and that ''a relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution.''

Now, that is strong and important language. ''A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution.'' I certainly agree with that. Now, I will point out that the Ninth Circuit, oddly, failed to accept even rehearing by the full Court. Why did they do that? The Senator has expressed some ideas about why. They were not very complimentary and did not suggest it was because of high ideals that they refused to even have the full Court review this panel. But I point out that the Seventh Circuit Court of Appeals, a coequal circuit with the Ninth Circuit, already considered the pledge case, and it has found it did not establish a religion.

So, normally, when a circuit is wrestling with whether or not a case is important and whether or not there is a dispute in the law, they would much more normally ask for and allow a rehearing to occur en banc.

The Seventh Circuit, when they considered it, framed the question precisely this way: ''Does 'under God' make the Pledge a prayer whose recitation violates the establishment clause

of the first amendment?'' They answered that question in the negative. The Supreme Court, according to Justice O'Scannlain, has insisted that interpretations of the establishment clause must comport ''with what history reveals was the contemporaneous understanding of its guarantees.'' ''The line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.''

So we are going to interpret the first amendment to prohibit the establishment of a religion and also prohibit Congress from passing any law that would restrict the free exercise of religion. We have to ask ourselves what did it mean when they wrote it? As Judge Fernandez, who dissented on the original opinion, so eloquently points out in his dissent: Only the purist exercise in sophistry could save multiple references to our religious heritage in our national life from Newdow II's—that is the case in California—axe. Of course, the Constitution explicitly mentions God—this is Justice O'Scannlain's opinion quoting Judge Fernandez—as does the Declaration of Independence, the document which marked us as a separate people, declared us independent. The Gettysburg Address, inconveniently for the majority, contains the same precise phrase—''under God''—found to constitute an Establishment Clause violation in the pledge.

After Newdow II, are we to suppose that, were a school to permit—not require—the recitation of the Constitution, the Declaration of Independence, or the Gettysburg Address in public schools, that, too, would violate the Constitution? Were the ''Founders of the United States . . . unable to understand their own handiwork?'' Were the Founders themselves unable to understand? When they put in the Constitution that we would not establish a religion, did they have any idea we were going to be striking down any references in their own Declaration of Independence to God, or in their own Constitution of which this was just a part? Of course, they didn't.

What that says is, of course, that was not what they intended. They never intended, when they passed the first amendment to the Constitution of the United States of America, that we would eliminate all references to a higher being in America.

Well, as Justice O'Scannlain notes, somewhat ingeniously indeed, that the recitation of the Declaration of Independence would seem to be a better candidate for the chopping block than the pledge, since the pledge does not require anyone to acknowledge the personal relationship with God to which the declaration speaks. So, too, with the National Anthem or our national motto, ''In God We Trust.''

What about our national celebration of Thanksgiving Day? It goes back to President George Washington's time when Congress stated that there was ''to be observed by acknowledgement with grateful hearts the many and signal favours of Almighty God.'' Congress made Thanksgiving a permanent holiday in 1941, and Christmas has been a national holiday since 1894. Are Newdow's constitutional rights violated when his daughter is told not to attend school on Thanksgiving? On Christmas Day? Must school outings to Federal courts be prohibited, lest the children be unduly influenced by the dreaded intonation ''God save these United States and this honorable Court.''? Are the schoolchildren not to go to the Supreme Court to hear arguments because it invokes God before Court starts every day?

Justice O'Scannlain says:

> A theory of the Establishment Clause that would have the effect of driving out of our public life the multiple references to the Divine that run through our laws, our rituals, and our ceremonies is no theory at all.

Of course, the Supreme Court, as I mentioned earlier, in several different cases, has directly, and by implication, affirmed the Pledge of Allegiance.

A full hearing of this case, which I am sure the Supreme Court will hear, will make clear this pledge will stand. I hope also they will take it upon themselves to deal with the confusion they have created in this inconsistent body of law.

Even Justice Brennan, that most stalwart supporter of separation of church and State, acknowledges that some official recognition of God is appropriate ''if the Government is not to adopt a stilted indifference to the religious life of the people.''

The decision reached in this case, I submit, does precisely that: Justice O'Scannlain says it adopts a stilted indifference to our past and present realities as a predominantly religious people.

Justice O'Scannlain goes a little further. He raises another point. Really, when it is all said and done, this opinion does not stand for neutrality in religion; this decision stands for and, in fact, favors atheism over religion. The absolute prohibition of any mention of God in our schools creates a bias against religion. The majority simply cannot credibly advance the notion that it is neutral with respect to belief versus nonbelief. It affirmatively favors nonbelief over belief. One wonders, then, does atheism become the default religion protected by the establishment clause?

We have people who object to putting in one clause in textbooks. I am not one who thinks church people ought to write the creation story or the evolution story in our textbooks. I think it would be appropriate, however, that our textbooks say that many believe the creating of life on this planet was conducted by a higher being. I do not see any problem with that. But some oppose even such a statement as that.

We have a lot of weird actions going on out there today by our courts. We have, as I mentioned—hopefully, we do not have any left—those who believe the Constitution itself, which prescribed how the death penalty should be conducted, prohibited death penalties. We have a problem in America in our legal system. It is the greatest legal system in the world. It is a system that has protected us in extraordinary ways, but we have to have judges who show restraint and who follow the law.

I notice two judges about whom people expressed concern, both nominated by President Clinton and confirmed, both of whom I opposed, although I voted for 95 percent of President Clinton's nominees—they have on separate panels, for example, authored opinions to overturn California's three-strikes-and-you're-out law. That has been on the books for years. As soon as they get on the Federal bench, they say the U.S. Constitution says your three-strikes-and-you're-out law passed by the people of California that has helped precipitate a rapid decline in crime in California and save thousands and thousands of lives is unconstitutional.

I think these are activist opinions. I think they will be reversed. In Andrade v. the Attorney General of California, Judge Paez ruled a lifetime sentence for a seven-time repeat offender was cruel and unusual. Seven times, Mr. President, and that number includes only his Federal offenses. Andrade also had more than a few convictions in State court. While he was on probation for a 1982 conviction, he burglarized three separate residences. Still, a lifetime sentence under the three-strikes-and-you're-out rule was too much for Judge Paez. He found the statute that provided for it unconstitutional.

In Brown v. the Attorney General of the State of California, Judge Berzon held that a 25-year term of imprisonment for two defendants convicted of petty thefts, Ernest Bray and Richard Brown, constituted cruel and unusual punishment. The reality is each defendant deserved their 25-year term of imprisonment. Each had a laundry list of offenses on their record. Defendants Bray and Brown are the type of career criminals that California's three-strikes law attempted to keep off the streets. Bray had four separate robbery convictions. Robbery is the taking of property through force and violence. One of those robberies was a situation in which shots were fired at the victim, and one where the victim was hit and kicked, not even considered by the jury. The jury did not get to consider his other offenses—obstructing and resisting a public officer, and trespass in 1979, possession of a dangerous weapon in 1985, being under the influence of a controlled substance in 1991, and petty theft with a prior conviction while out on bail for the three-strikes offense.

Brown's prior convictions included two counts of second-degree burglary, two counts of assault with a deadly weapon, and a robbery conviction—two counts of assault with a deadly weapon

and a robbery conviction. Additionally, he had eight other convictions on his record. Judge Berzon said it was cruel and unusual to put these offenders away for this period of time.

I am glad to see my distinguished colleague from Vermont in the Chamber. I supported a judge from Vermont. He had a good name, William Sessions. He has been on the bench only a few years and he has declared that the way the Federal death penalty is conducted to be unconstitutional. I can tell you how it is conducted.

Mr. LEAHY. Mr. President, I would hope that the distinguished Senator, my good friend from Alabama, would state Judge Sessions' ruling accurately. Judge Sessions has stated he feels the death penalty is constitutional. He has a matter that has been very thoroughly ruled on in a particular case and the way it was handled in that particular case and did it in a way so that the courts of appeals can rule on it, not the least of which has been done by a number of other judges. In fact, among those judges who would rule on it, several were appointed by President Reagan and by former President Bush and the current President Bush.

I am sure if the Senator suggests there might be something political in this, it is being set up in such a way that still the ultimate decision would be decided by a majority of judges appointed by Republican Presidents.

Mr. SESSIONS. I think we should be correct. As I understand his ruling, it was not that the act was unconstitutional, Senator LEAHY is correct, and I do not think I said that, but the way it was carried out raised constitutional implications.

I will note, having been a Federal prosecutor myself for 15 years, I know Janet Reno personally set up a committee to approve any death penalty case in Federal court, and that committee was charged with the responsibility of making sure it was fairly and objectively administered.

She made the final decision on it. I know she opposed the death penalty herself personally. So I do not believe the Federal justice system of handling the death penalty is unfair.

Going further than that, in July of last year, Judge Jed Rakoff of the Federal District Court in Manhattan ruled more broadly that the Federal Death Penalty Act was unconstitutional, saying the death penalty is:

> Tantamount to a foreseeable state-sponsored murder of innocent human beings.

Mr. LEAHY. Mr. President, will the Senator yield briefly for a question?

Mr. SESSIONS. I will be pleased to yield.

Mr. LEAHY. In that case, when that went on appeal to the same court that will be hearing the Sessions case, they overruled the judge the Senator referred to; is that not correct?

Mr. SESSIONS. They absolutely did. That was my next point I was going to make.

Mr. LEAHY. My point being, there are checks and balances in here.

Mr. SESSIONS. Well, the checks and balances did not work in the Ninth Circuit, as Senator REID guaranteed virtually it would when he made remarks suggesting that panel was going to override the three-judge panel.

The problem is, and the reason it is important, is these are rulings that reflect a person's personal views. A judge should not overcome the law. If he wants to go out and write letters and argue that the death penalty is unfair and should be repealed, I guess if he can do that consistent with his ethical standards, that is all right. He certainly can make reasoned remarks on it. I do not think he should use the power of his bench to strike it down.

There are many more examples of recent rulings with which most Americans would not agree. Take for example a recent ruling concerning the Ohio State motto, ''With God all things are possible.'' The Sixth Circuit recently told Ohio its motto was unconstitutional. What about ours, ''In God We Trust''?

It would take a Philadelphia lawyer to distinguish why ''In God We Trust'' is OK and the Ohio motto ''With God all things are possible,'' is not. The Sixth Circuit told Ohio its motto was unconstitutional because it established a religion, and that is really weird.

There are many cases around the country where you cannot have Christmas decorations put up. We have death penalty laws being struck down. We have three-strikes-and-you're-out laws being struck down. If they violate the Constitution, that is all right; they should be stricken. If someone passes a death penalty law in a fashion that is violative of the U.S. Constitution, a Federal court—or a State court, for that matter—should strike it down on the spot. If a three-strikes-and-you're-out law is unconstitutional, it ought to be stricken. But so far as I have been able to ascertain, States are empowered to set penalties for crimes in their States. They can enhance penalties for multiple offenses, and judges can give enhanced penalties for multiple offenses.

In my view, there is no law, no basis, for us declaring that these acts are unconstitutional.

The point of all of that is to say: This is what activism is. This is what President Bush has said in his campaign he does not want. He is not asking the judges he nominates to carry out his agenda politically. He is prepared to fight it out in this Congress and with the American people. He does not want those judges conducting and carrying out their political agendas through the interpretation, misinterpretation, or the reinterpretation of the meanings of words and statutes in our Constitution. It is a very big deal.

I hope the Supreme Court will take seriously its responsibility to guide us out of this thicket it has gotten us in with regard to its confused and inconsistent rulings on the separation of church and state, on the observance of an issue of any kind of reference to God in public life.

I did have a church group that came and visited me. They said they were in the Supreme Court. They were very sincere, wonderful young people. They took their faith seriously and they took a moment over to the side and all huddled around and had a prayer for these United States of America and the legal system of America. The guard in the Supreme Court came along and shooed them out and said they could not be praying in the Supreme Court.

So this is the kind of example of overreaching that we hear about in our schools, in our public affairs, on our courthouse squares, and even in the opinions of Federal judges. We can do better.

We need to appoint judges who are committed to following the law. Miguel Estrada is that kind of person. That is the only thing he stands for. That is the only thing in his record he is known for; that he believes we ought not to abuse the system; that judges ought to show restraint. That is what he will do if confirmed. That is why the American Bar Association unanimously gave him the highest rating they give, which is received by only a very few nominees. That is why President Bush has asked the American people to allow him to do what he ran for office to do. He said this is what we are going to do. This is how I look at the courts and that is what we are going to try to do.

I do not see why anybody should be afraid of a judge who follows the law. What we should be afraid of is judges who believe they have a right to reinterpret the law and impose their own views on all the rest of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending question is the nomination of Miguel Estrada.

Mr. LEAHY. I am sorry. I thought when I came we were having a debate on the Ninth Circuit, which I understand has now put the Pledge of Allegiance case on the fast track to the U.S. Supreme Court, which has a majority of conservative Republicans. I am sure the distinguished Senator from Alabama will be very happy with whatever way they rule on that.

In the meantime, I say to those in my State of Vermont who ask, there has been no challenge to the law in Vermont. We are not within the Ninth Circuit, and I expect children in Vermont will continue to say the pledge as we have been saying it since sometime in the 1950s, I believe, when the words ''under God'' were added to it.

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

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

Mr. LEAHY. Mr. President, we have spent a lot of time talking about the Pledge of Allegiance, which is important to the American people, and about the Estrada nomination, something that could be settled very quickly if the White House wanted to settle the matter. They have made it very clear that they do not. In fact, they have even gone so far as to publicly reject calls from a distinguished Republican, a Senator in this body, to do so. That has been in keeping with the attitude we have seen more and more on such judicial matters by the White House. They take the attitude that the Senate is irrelevant, that we should simply do whatever they say—and sometimes do.

The Senate majority replaced their majority leader at the request of the White House, something unprecedented. And now they seem willing to also take the attitude that if they confirm someone, just do it without even asking questions about the person.

The fact is, we would probably have this debate over now if they brought forward the writings of Mr. Estrada, which he said under oath he was perfectly willing to bring forward. If it weren't for that, we would have had the hearings and be finished by now.

As I go around the country, my own State or other parts of the country, I have not had an awful lot of people come to me and say: Thank God the Senate is debating one judge.

Since President Bush took office we have confirmed 105 or 106 or 107 of his judges anyway. We are going to spend weeks debating that.

What I hear from people is: Why is there not any discussion about a possible war against Iraq? The British Parliament has had a major debate on it. The Turkish Parliament had a major debate on it. The Canadian Parliament had a major debate on it. Country after country is debating this issue.

What is the Senate, the most deliberative body in the world, the body that considers itself the leading parliamentary body in the world, what have we done?

The impression of the American people is, both Republicans and Democrats, is that the Senate does not want to discuss a war with Iraq. I guarantee that if any one of 100 Senators go home—go into any restaurant, any diner, any gas station, any grocery store in their own State, they will find that most people are asking each other if we are going to war or we are not going to war. They are not discussing whether instead of 105 judges having been confirmed so far for President Bush, it will be 106 judges. That is not what they are concerned about.

On February 26, we listened to the distinguished senior Senator from West Virginia, Mr. BYRD, who pointed out with characteristic clarity and eloquence the President's failure to request a single dime in his fiscal year 2004 budget, which he sent to Congress recently, to finance a war with Iraq. It is almost as if the White House believes we can fight a war and somehow sprinkle fairy dust and the money will just miraculously appear to pay for it.

As I listened to the Senator's remarks, I could not help but be struck again about the cavalier and dismissive way the administration has dealt not only with our allies and friends on the issue of disarming Iraq but also with the Congress and the American people. Essentially their attitude has been: We do not need you. We do not have to tell you, but you better support us.

We have seen administration officials globe trotting, in some cases offering billions of dollars and even trade concessions to the disadvantage of American workers, to other governments, in support of a war against Iraq. They will not ask Congress for a dime to pay for the war, but they are running around the world offering billions of dollars to other countries so they will support us.

When I see the billions of dollars being promised to Turkey and everywhere else, I ask: What about the first responders at home on the front line, protecting our security? They have been promised money. The President gave a good speech in New York City about how the first responders will be prepared to respond to terrorism, and that U.S. Government will be there to support them. But it is the old ''the check is in the mail.''

I look at my own State of Vermont. Like the State of the distinguished Presiding Officer, it borders Canada. We have unique problems because there we have an international border. We need to do a lot more to protect our borders and to respond, but we do not have the money to do it.

I say to the distinguished Presiding Officer, if there is a terrorist attack, God forbid, against a nuclear power plant on the border between Vermont and New Hampshire, the first calls, the first 9–1–1 calls will not go to the Office of Homeland Security. They will go to the local sheriffs and the local fire departments and the local hospitals. But we are not giving them the money that was promised.

The President acknowledged when he signed the huge omnibus appropriations bill—a bill, incidentally, that was scrubbed carefully all its way through by the White House, that it did not include sufficient funds for local and State governments to protect their citizens against terrorism. That is something Senator BYRD and I and others had been saying for months. There is not enough money in there. I guess the White House thought no one would read it.

Secretary Rumsfeld was asked what is the cost of a war against Iraq? His response was that it is ''unknowable.'' Senator BYRD mentioned this last week, and then Deputy Secretary Wolfowitz told Congress the same thing.

No one can predict with certainty how long a war will last or precisely what it will cost, not to mention the potentially immense cost of caring for an estimated 2 million refugees and of rebuilding Iraq.

But to say we do not have any idea, that is maybe convenient, but it is totally unacceptable.

The American people should not be asked to send their sons and daughters into battle without an even rudimentary understanding of what the potential costs are, both in dollars and American lives. None of us expect the Pentagon to calculate these costs with precision, but there is no doubt that a war, and its aftermath, would cost tens if not hundreds of billions of dollars, as the President's former economic adviser predicted.

If we are going to commit American taxpayers to a war costing hundreds of billions of dollars, let us say so. If we are going to promise American taxpayers that there will be first responders to protect them in their local communities, let us also be honest and say that we provided the money.

In fact, the cost of a war, at least one in which Saddam Hussein's army is quickly defeated as the administration optimistically predicts, has been estimated by the administration. So what was to prevent the President from at least requesting the best-case scenario, somewhere between $60 billion and $95 billion at last count, in his fiscal year 2004 budget?

I think there is only one explanation. The President does not want to ask the American people whether—in the midst of a recession with no end in sight, with millions of jobs already lost, more jobs lost during this President's term than that of any other President in my lifetime, and more Americans becoming unemployed every week—he did not want to ask the American people whether we can afford to spend tens or hundreds of billions of dollars on a war that fully half the American people do not support.

We did this during Vietnam. Nobody wanted to say what it cost because they knew what the reaction would be.

I want to see Saddam Hussein disarmed as much as anyone. His despotic reign and his obsession with acquiring weapons of mass destruction while his people suffer has been disastrous for his country and for Iraq's neighbors.

But, if we look back over the past several months, this administration's handling of the Iraq issue has been notable for its secrecy, its doublespeak, and its arrogance. One day they are dismissing the United Nations as irrelevant. The next day they are making either threats or billion-dollar deals with allies or members of the Security Council to win their support for a resolution authorizing the use of force.

Depending upon who the messenger is, or whether they are speaking publicly or behind closed doors, the President first said the goal was regime change, then disarmament, and now both, but that one cannot occur without the other.

The President has told the American people he has not yet made a decision to attack Iraq, but his advisers are telling the rest of the world that the decision has been made, and the Security Council of the United Nations doesn't matter because we are going ahead, no matter what. This is the administration's attitude, even while some of our closest allies work to explore alternative options that could avoid war.

The administration's rhetoric and actions have damaged key alliances and weakened our ability to work with allies and friends, not only to disarm Iraq but to solve many other global problems. They have recklessly squandered the reservoir of good will our Nation had around the world in the aftermath of September 11. Never in generations has the world been as united behind the United States as it was after September 11. In only one year, we have squandered that support.

How are we going to pay for this war? Apparently not by requesting the funds in the budget. They have not done that. Again, as Senator BYRD pointed out, the amount of money requested in the budget, to plan and carry out a war, and for its aftermath, is zero.

It is reminiscent of Afghanistan, the country the President said he is committed to for as long as it take to keep it from again becoming a haven for terrorists. The amount of money requested by the administration last year was zero. It is like promising the money for first responders in Texas or Vermont or New Hampshire or anywhere else, and then leaving it out of the budget.

So how will they do? By paying for it with red ink, cranking up the printing presses and adding to the deficit. This President inherited the largest surplus of any President in history. He is now building up the largest deficit of any President in history: Another hundred billion, what is the difference? That is the way they talk.

Yet these are the same people who were giving great speeches just a few years ago about why we need a constitutional amendment to balance the budget. They ought to be darned glad they didn't get what they wished for.

So, a balanced budget doesn't make any difference, the deficit doesn't make any difference, and don't look behind the curtain because we are not going to tell you how much it is going to. Let us hope the President's advisers are right and the war is over in a matter of weeks. Sometimes wars do end quickly.

I remember my son, a young marine, was called up in Desert Storm. Like his fellow marines, this young lance corporal answered, ''Aye, aye,'' and set off with his fellow marines. The war ended very quickly. He was not in harm's way, unlike others who were.

I am proud of him for volunteering to go. I am proud of all America's men and women who will answer the Commander in Chief's call to go. But I believe we ought at least know what we are asking them to do and why.

Let us hope the war is over in a matter of weeks. Let us hope the Iraqi Army does crumble like a house of cards. Let us hope Saddam Hussein does not blow up his oil wells and refineries. Let us hope he does not use his chemical or biological weapons. Let us hope our troops do not become bogged down in hand-to-hand urban combat, and that there will be few Iraqi civilians killed. Let us hope that predictions of massive unrest throughout the Muslim world in protest at the U.S. invasion of Iraq, and increases in the number of terrorist attacks against Americans, will be proven groundless. Let us hope the ethnic and religious factions within Iraq, some of which hate each other, will put aside their differences and join together to build the representative, democratic government the President has promised. And let us hope the President's grand vision, about which we have been given no details, to make the entire Middle East democratic, will be off to a successful start. Let us hope so.

But let us also understand it is possible that any one of these dire predictions could come true and any one of them could be disastrous for our soldiers, for innocent civilians, for the U.S. economy, for our national interests abroad, for the Middle East, for the world, and for the fight against terrorism.

Wars are unpredictable. The real costs of a war against Iraq may not be known until long after this President's term is over.

Who knew, back in 1991, that thousands of gulf war veterans would suffer from unexplained, debilitating medical problems years after the war ended and that many would never be able to work again? Who can say this war will not be the spark that ignites more terrorism against the United States—perhaps not this year or even next year, but in 3 years or 4 years? By that time, it will be too late.

We have to think about these things even if the President would rather not talk about them. We have a duty to ask what are the administration's real motivations for this war. Is it to get rid of weapons of mass destruction from Iraq? If so, why not give the U.N. inspectors the time they need and a plan for enforcing disarmament? Is it to promote democracy in Iraq? If so, then why not begin with Kuwait, which we liberated a decade ago but which even today remains a monarchy, where women still are not allowed to vote?

We have a duty to ask these questions, and to warn the American people of the risks, even if the President will not. And we must do everything we can to be sure that if war comes, it is supported by the broadest possible coalition.

So I commend the senior Senator from West Virginia for his remarks last week, and for the other statements he has made on this issue. He has asked the questions that need to be asked. I hope the administration, finally, will give the answers before the country goes to war, and not after.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

TEXAS INDEPENDENCE DAY

Mrs. HUTCHISON. Mr. President, March 2 is Texas Independence Day. Every year I have been in the Senate, I have carried on the tradition, started by Senator John Tower, of reading on or about March 2—Texas Independence Day—William Barret Travis's letter from the Alamo.

I just want to give a little background because, of course, Texas is the only State that came into our Nation as a nation. Texas was a republic for 10 years, having fought very hard for its independence from Mexico.

In fact, William Barret Travis's letter was dated February 24, 1836. His letter was an appeal for support because he only had 184 men in the Alamo, in the garrison, and, of course, he was vastly outnumbered by the Mexican Army. So he was asking for help. He was pleading for help.

All of this was happening around the time that the duly elected members of the Declaration of Independence Congress were coming to Washington-on-the-Brazos to sign the Texas Declaration of Independence from Mexico.

It was a trying time between February and April of 1836 for these Texans who were trying to gain their independence and who eventually became a part of America.

It was at the Alamo, in San Antonio, TX—Tejas at the time—that 184 Texas rebels, led by William Barret Travis, made their stand against Santa Anna's vastly superior Mexican Army.

These Texas patriots did not even have uniforms. They barely had arms. In fact, they only had about $1,000 to fund this entire army. So they did not waste any money on uniforms. They needed arms, and that is where they spent their money.

On the second day of the siege, February 24, 1836, Travis called for reinforcements with this heroic message:

> Fellow citizens and compatriots: I am besieged by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual bombardment and cannonade for 24 hours and have not lost a man—the enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat.
>
> Then, I call on you in the name of liberty, of patriotism and of everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase