ment of unfit characters." Senators have interpreted this power in different ways.

Under one standard, the one I have come to use, it is the Senate's role to evaluate the nominee on the basis of his competence and integrity. This standard is premised on the view that the President, elected by all the people, was empowered by the Constitution to appoint officeholders who would further his philosophy and goals. The other standard, a distinctly minority and different view, was that a Senator would vote his perference on the political views of the nominee. The second standard was, and is, very tempting. Abner Mikva's views were much more liberal than mine. But, after careful analysis I decided that politics did not belong. As I stated at the time:

> The power to "advise and consent" on judicial nominations has never been viewed as authority for the Senate to substitute its judgement for the President's on the qualifications of a nominee. For two centuries that power has been regarded as authorizing rejection of nominees for only two reasons—lack of integrity or lack of competence. No judicial nominee has even been rejected simply because the Senate disagrees with his political views.

So, I swallowed hard and voted to confirm Abner Mikva. I have employed that standard for every judicial nomination since. I did for Judge Bork, and I will apply it to the Judge Souter's nomination today.

In sum, my constitutional advise and consent role is to evaluate a nominee's fitness to serve as a judge. My goal is to insure that members of the Supreme Court are able jurists, honest, and will fairly interpret the Constitution and laws of the land. I do not have a litmus test; such tests are not appropriate. I do not look for a political agenda or philosophical bias. Competence and integrity are what matter.

Mr. President, Judge Souter is competent and has an unblemished history of legal and public service. His career is one of high intellectual achievement and personal integrity. While watching his confirmation hearing before the Senate Judiciary Committee, Judge Souter showed me that he is a man of deep intellectual character; a man who will approach every case presented to the High Court with a willingness to listen carefully to both sides, and then cast his vote based upon the principles embodied in our Constitution. He does not bring a personal or political agenda to the court. The only agenda Judge Souter has is to interpret the Constitution and law consistent with the principles of fairness and justice.

I was most struck by a comment Judge Souter made about the awesome power that any judge must have, especially a member of the Supreme Court. Let me quote Judge Souter when he described his judicial role: "Whatever court we are in * * * at the end of our task some human is going to be affected. Some human life is going to be changed by what we do * * * (therefore) * * * We'd better use every power in our minds and our hearts and our beings to get those rulings right."

Mr. President, I conclude David Souter is fit to serve on the Supreme Court of the United States. This very intelligent, scholarly, and refreshingly private man well understands the imposing authority, power, and responsibility that he will have on the highest court in our land. He will not abuse that awesome power, but will interpret the Constitution of this land fairly and with compassion. These are the essential characteristics of a judge and make him fit to serve, and serve well on the Supreme Court.

Mr. HEINZ. Mr. President, on July 23, 1990, President Bush nominated David Hackett Souter, presently a sitting justice on the U.S. Appeals Court for the First Circuit, to fill the Supreme Court seat left vacant with the retirement of Associate Supreme Court Justice William Brennan.

As is the case with every recent Supreme Court vacancy, Judge Souter's nomination has engendered public debate and public scrutiny. The public has a compelling interest in the character and capabilities of individual justices who would serve on the Supreme Court, the highest court in the land. A nomination to the U.S. Supreme Court is a lifetime appointment, and the nine justices of the Court are, therefore, a select group. Together, they represent the final arbiters of the Constitution, the framework of our democracy and the guarantor of our individual liberties.

Because of the importance of the position, the Senate is required, under the Constitution, to give the President our advice and consent to the nomination. I approach this decision with an especially keen sense of responsibility. The process is demanding and challenging. In the discharge of my duties, I owe to my constituents, and Judge Souter, an impartial and fair decision in casting my vote.

In the 2½ months since the President nominated him, the Nation has learned a lot about David Souter, the person and the jurist. His entire life has been put under a microscope, leaving not a single aspect of his career uninvestigated. The Senate Judiciary Committee and numerous interest groups examined hundreds of his decisions as a member of the Supreme Court of the State of New Hampshire. They probed the actions he took and the briefs he wrote as attorney general and assistant attorney general of New Hampshire. They looked into his finances, his education, and his pastimes. The committee itself questioned Judge Souter for 20 hours in open session—more time spent before the committe by any other Supreme Court nominee in history save one.

Mr. President, the record demonstrates that Judge Souter is eminently qualified to sit on the Supreme Court. As an alumnus of Harvard College and Law School, a Rhodes scholar, private practitioner, New Hampshire attorney general and State supreme court justice, Judge Souter has shown the scholarship, legal acumen, professional achievement, integrity, fidelity to the law and committment to the constitution to serve on our highest court.

A standard I have applied in all nomination considerations is to determine whether the nominee is an extremist or activist. If so, the nominee should be rejected. I believe this test is fair and impartial, preventing extremism of both the right and left, either a conservative activist or liberal activist from joining our highest court. In responding to direct inquiries from committee members, Judge Souter articulated a judicial philosophy that is within the mainstream of constitutional thought. His answers on the issues of original intent, stare decisis, statutory construction and judicial restraint revealed a judge committed to rendering an honest interpretation of constitutional rights and liberties. He strongly and convincingly indicated his commitment to precedent regarding previous interpretations of the Bill of Rights, due process and the equal protection clause of the Constitution.

One of the highly controversial aspects of this nomination revolved around how Judge Souter would rule on cases coming before the Court which challenged the premise of the Supreme Court's decision in Roe versus Wade. Several Senators directly, and some others indirectly, asked Judge Souter his position on this controversial case. Judge Souter declined to answer this line of questioning, as is his perogative, since cases concerning abortion rights are scheduled to be heard by the Supreme Court in the near future. Judge Souter did comment on the constitutional underpinnings to that decision—the right to privacy. He stated that he believed that there is a fundamental if unenumerated right to privacy in the Constitution, and that the right of married couples to make choices about procreation is at the core of that fundamental right. His response may not have satisfied either side of the abortion debate, but it did reveal a person with a scholarly appreciation of the competing constitutional interests and with the integrity to render judgment in accordance with those interests.

Finally, Mr. President, I found this nominee to be both learned and eloquent. In his opening statement, and I recommend it to all my constituents interested in gaining a measure of this

man, Judge Souter acknowledged that the actions of a jurist cannot be rendered without thought to its effect. He recognized that his actions will affect human beings, that some human life is going to be affected in some way. His comments suggest to me a man who is capable of bringing depth and compassion to the Supreme Court.

Therefore, Mr. President, I will vote in favor of the nomination of David H. Souter to the Supreme Court of the United States.

Mr. DOLE. Mr. President, after 3 days of testimony and 18 hours of often grueling congressional questioning, Judge David Souter has demonstrated to America that he deserves a seat on our Nation's highest court.

Throughout his legal career—as New Hampshire attorney general, as an associate justice on the New Hampshire Supreme Court, and as the author of more than 200 judicial opinions—Judge Souter has consistently distinguished himself with his keen intellect, with his evenhandedness, and with his commitment to the rule of law.

Most importantly, Judge Souter understands that in a three-branch democracy such as ours, the role of a Federal judge is to interpret the Constitution strictly, and not to legislate one's own personal or political agenda from the bench.

So, Mr. President, it is no wonder that the American Bar Association has given Judge Souter its highest rating—well qualified.

And it is no wonder that—last week—the Judiciary Committee gave Judge Souter its stamp of approval—for the second time in less than a year.

JUDGES, NOT POLITICIANS

Throughout the confirmation process, Judge Souter has consistently refused to answer specific questions about specific cases now pending on the Supreme Court's docket.

This reticence may disappoint some of the beltway special-interest groups, but it does not disappoint the American people.

The American people have always cherished, and jealously guarded, the independence of their Federal judiciary. And they understand that this independence is endangered—gravely endangered—by the brazen intrusion of special-interest politics into the confirmation process.

To his credit, Judge Souter has gamely resisted these political pressures. And, for this, he has earned the Senate's—and the Nation's—respect and gratitude.

Mr. President, it is my hope that the experience of this nomination will help set the standard for Senate review of future Supreme Court nominees.

Without a doubt, Senators have a constitutional obligation to probe a nominee's judicial and legal philosophy. They have the right to ask tough questions. And they may properly examine personal qualities that are of critical importance to a nominee's fitness to serve—qualities like openmindedness, integrity, a commitment to equal treatment under the law for all Americans, and an ability to understand real life people and their real-life problems.

These topics are all fair game. And no Senator should feel reluctant to press a nominee hard in these areas, and to reject that nominee if he or she falls short of the mark.

But, Mr. President, no nominee to the Supreme Court—or to any court, for that matter—has the obligation to explain how he or she will vote once confirmed.

Simply put, Federal judges should judge only from the Federal bench. They should not, and must not, prejudge cases from the bench of a Senate confirmation hearing.

In a recent article, former Chief Justice Warren Burger gave us all ample warning about the dangers of transforming Federal judges into politicians.

And I quote:

No nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined in detail before the Supreme Court with all the nuances that accompany a constitutional case. Presidents and legislators have always had platforms and agendas, but for judges the only agenda should be the Constitution and the laws agreeable with the Constitution.

THE SUPREME COURT'S FALL TERM

Mr. President, yesterday, the Supreme Court began its fall term. There are many important cases now pending on the Court's docket—cases involving the death penalty, the right to legal counsel, school desegregation, and the constitutionality of punitive damage awards.

With these important issues now under consideration, the Supreme Court deserves a ninth Justice who has the intellectual capacity to hit the ground running, to make a contribution to the intellectual life of the Court right from the start.

By any standard, Judge Souter has demonstrated an intellectual ability, skills as a lawyer and jurist, and a quiet, but firm, personal and judicial temperament that leave little doubt that he will make a significant contribution to the Court from day one.

Very simply, Judge Souter deserves to be confirmed by the Senate, and he deserves to be confirmed today.

Finally, Mr. President, I want to thank the distinguished chairman of the Judiciary Committee, Senator BIDEN, and the committee's ranking member, Senator THURMOND. They have conducted fair and comprehensive hearings. And they have greatly assisted the Senate in discharging its constitutional responsibilities.

I also want to congratulate my good friend and colleague, Senator WARREN RUDMAN. As most of us know, Senator RUDMAN's interest in this nomination extends beyond "advice and consent" to the bonds that flow from of a long and enduring friendship.

The success of Judge Souter before the Judiciary Committee, and almost certainly before the Senate later today, is as much a testament to the qualities of the Senator from New Hampshire as it is to the considerable qualifications of this fine nominee.

Mr. PACKWOOD. Mr. President, I rise today to discuss the nomination of Judge David Souter to be an Associate Justice of the U.S. Supreme Court.

No duty of a U.S. Senator is more important or deserving of careful consideration than that of a nomination to the Supreme Court. If confirmed, a nominee may well serve for decades, and his or her written opinions and ability to persuade fellow Justices will profoundly affect our lives, and the lives of future generations.

In the days since the Senate Judiciary Committee completed its hearings on Judge Souter, I have given this nomination a great deal of thought.

First, I have examined transcripts of Judge Souter's testimony before the committee.

Second, constituent organizations have shared their concerns with me about this nominee. This input was welcome and helpful in directing my attention to aspects of Judge Souter's record as well as the hearing proceedings.

Third, I have listened with interest to the reasoning of my Senate colleagues as they announced their respective positions on this nomineee.

Ultimately, of course, each Senator must keep his or her own counsel in a matter of this magnitude. I welcome this opportunity to share my decision on this nomination and the thinking which led me to it.

First, and I will not belabor this point because so many other Senators have covered it quite eloquently, Judge Souter has a superb educational background and impressive legal experience. The number of years he served as a State court judge, and State attorney general, leave no doubt of his legal competence.

In addition, those who know Judge Souter personally, gave him positive references almost without exception. This is true of: hearing witnesses; the judge's friends and associates who have been quoted in the media; and individuals of long acquaintance with Judge Souter who personally shared with me their high regard for him.

Judge Souter's associates find him personable, compassionate, and possessed of great integrity.

As important as outstanding professional competence and excellent char-

acter are, those qualities alone do not a Supreme Court Justice make. The Senate's constitutional duty to provide advice and consent in the matter of Supreme Court nominations demands that we look beyond these qualities to the most critical issue: what kind of steward of the Constitution would this nominee be?

There is absolutely no doubt that the next Justice to the confirmed will be the deciding vote on a number of issues of critical importance to Americans.

Keeping this in mind, as well as the duty of Congress to safeguard constitutional rights, I reviewed with particular interest Judge Souter's testimony on privacy, gender discrimination, civil rights, and freedom of religion.

Judge Souter was questioned on freedom of religion by committee members concerned about two of his actions as State attorney general:

First, his defense of an executive order calling for the lowering of flags on Good Friday, and

Second, his statement that the beliefs of Jehovah's Witnesses who refused to display the words "Live free or die" on their license plates were "mere whimsy."

Mr. President, I, too, felt concern about these positions which the judge had taken. Freedom of religion, one of the basic tenets on which our Nation was founded, means nothing if a State can establish one sect as more legitimate by its actions, or prevent the free exercise of religion. I was therefore gratified to note that the hearing record reflects that Judge Souter would apply strict scrutiny to laws that impair the free exercise of religion. His answer about the reasoning he would apply in cases where a State is alleged to violate the establishment clause was somewhat less clear. However, on balance, I am satisfied that the positions he took as Attorney General would not be reflected in his philosophy as a Justice.

Civil Rights is another area I red flagged for careful review, due in part to Judge Souter's now-famous alleged quote that "affirmative action is affirmative discrimination." I was also interested in the novel position he took as State attorney general that employee privacy rights prohibited the State from revealing its minority hiring practices to the Federal Equal Employment Opportunity Commission. However, Judge Souter's testimony again did much to allay my concerns. He did not reject the concept of affirmative action, and indicated that he would find it appropriate in certain circumstances. He also showed, in my view, a sensitivity to the degree that race discrimination affects our Nation, recognizing it as a tragedy. Finally, he left no doubt that Brown versus Board of Education is to him a matter of well-settled law.

On the issue of gender discrimination, Judge Souter indicated dissatisfaction in his testimony, as he has in his writings as an attorney and a judge, with the so-called middle tier of constitutional protection generally used. He is not the first to find fault with this standard. More important to me than his criticism of midlevel scrutiny, is what standard of protection he would apply in gender discrimination cases: Strict scrutiny? The rational basis test? Or a newly fashioned, more acceptable middle tier standard? This issue is of more than academic concern to American women, and I wish the record were more illuminating in this regard.

Finally, let me address the issue of the constitutional right to privacy. In this area of the law, more than any other, Judge Souter was reluctant to discuss his views, and he has been widely criticized for this. Judge Souter agrees that there is a fundamental marital right of privacy as found in Griswold versus Connecticut, which includes the right to use contraceptives. However, he stopped short of expressing his opinion of the reasoning in Eisenstadt versus Baird, in which the court found that the right to use contraceptives extends to unmarried persons.

He did this, I believe, out of an overabundance of caution rather than any desire to frustrate the factfinding efforts of the committee. It is obvious from the record that Judge Souter believed that any discussion of a case coming anywhere near Roe versus Wade in the line of privacy cases might cause him to comment on the merits of Roe. I disagree with his position that answering the committee's questions on Eisenstadt would have been improper. However, each nominee must decide for him or herself what the bounds of propriety are for discussing issues they feel may come before the court.

I also disagree with Judge Souter as to whether the right to choose recognized in Roe is a matter of settled law. However, in the face of my dissatisfaction and disagreement with some of his responses in this area, I keep coming back to one statement he made. In response to Senator KOHL's question: "Do you have an opinion on Roe versus Wade?" Judge Souter replied, "I have not got any agenda on what should be done with Roe versus Wade, if that case were brought before me. I will listen to both sides of that case. I have not made up my mind, and I do not go on the court saying, I must go one way or I must go another way."

My distinguished colleagues, based on what we know of Judge Souter's character, and the totality of his testimony, I take him at his word. And knowing that he is of an open mind on the question of abortion, I find encouragement in his statements about how he would evaluate a claim that a particular right is fundamental. Judge Souter voiced approval for Justice Harlan's approach, taking into consideration the history and traditions of the American people. If he applies that analysis, the right to choose must, I believe, be found to be fundamental because the legal structures against abortion in this country are of comparatively recent origin. Indeed, at the time our Constitution was written, abortion was permitted under the common law.

Further, I am convinced that Judge Souter is cognizant of the legal chaos that would ensue if the right to choose is struck down. He testified that the practical consequence of overturning Roe would be "a range of protection afforded which would raise complicated federalism issues." When asked by Senator METZENBAUM whether he would consider consequences, such as the death of women from botched illegal abortions, in determining whether the right to choose is fundamental, Judge Souter indicated strongly in the affirmative.

Although I take these as encouraging signs that this nominee would recognize that the right to choose is fundamental, I am not so naive as to assume what his decisions in individual cases would be on this or any other issue. To paraphrase an apt statement, which one Senator made in committee, I cannot be accused of making my decision on Judge Souter based on the single issue of abortion, because I do not know where he will come down on that issue. I do not believe we will be sent a nominee in the foreseeable future whose position on Roe and abortion will be easily discerned. Given those circumstances, and based on the totality of the record, I will vote to confirm Judge David Souter to the U.S. Supreme Court.

This does not mean that I believe it is inappropriate to ask nominees where they stand on the right to choose. Nor does it mean that if a nominee clearly indicated that he or she would overturn Roe that I would not mount a vigorous campaign against that nominee's confirmation. However, this nomination is not the occasion to wage that battle. The record simply does not indicate to me that Judge Souter would go to the Court with the intent to overturn Roe, or that he has an agenda to weaken constitutional protection against discrimination or freedom of religion.

Mr. President, I will vote to confirm Judge Souter, believing that the scholarly mind and compassionate heart which he evidenced during the confirmation hearings, will serve him and the American people well in his years on the Court.

39-059 O-91-10 (Pt. 19)

Mr. McCONNELL. Mr. President, I rise today in support of the confirmation of U.S. Court of Appeals Judge David H. Souter as an Associate Justice to the Supreme Court of the United States.

Before addressing the nominee's qualifications, I would first like to speak to the standard by which I examine nominees to the highest court in the land.

Over 20 years ago, as a legislative assistant in the Senate, I began to review and study the intent of our Founding Fathers in this important constitutional process. As a result, I devised a standard that I believe to be the Senate's role in this process. It was during this time that I wrote a law review article on this topic. Mr. President, I request that my article, "Haynsworth and Carswell: A New Standard of Excellence," Kentucky Law Journal (Volume 59, 1970-71), be included in the RECORD at the conclusion of my remarks.

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

[Article not reproducible in the RECORD.]

Mr. McCONNELL. Mr. President, an examination of the Senate's historic role in this confirmation process should begin with the political writings contemporaneous with the drafting and approval of the Constitution. In the Federalist, No. 76, in discussing the nomination process, Alexander Hamilton clearly defines the limits of the Senate's "advice and consent" power:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would . . . be an excellent check upon a spirit of favoritism in the President, and . . . prevent the appointment of unfit characters from State prejudice, from family connection, personal attachment, or a view to popularity.

Clearly, a test of ideology and politics was not contemplated. Also, the very structure of the proposed government, and the relationship of each branch to the other, supports this view. The framers intended for three separate and independent branches of government. The judiciary was to be free from political influences, insulated from the whims of a changing majority and answerable only to the law and a public that expected the judicial branch to despense justice free from the taint of popular politics. Any attempt to deny confirmation on the basis of a philosophy, that is within the mainstream of American political and judicial thought, is an assault on this tripartite structure of government. It is clear under our form of government that the advice and consent role of the Senate in judicial nominations should not be politicized.

Therefore, from Hamilton's description of the Senate's role in the nomination process, I have identified five basic criteria for reviewing nominations to the Supreme Court: Competence, temperament, judicial propriety, judicial achievement, and personal integrity.

Obviously, there are other theories to apply regarding the correct confirmation test, at various times during the history of Senate confirmation proceedings of Supreme Court nominations, the personal or political philosophy of the nominee has become the principle, and sometimes the only, criteria for fitness to the Court. Most recently, we went through the shameful debacle of the Bork confirmation process. The Bork proceeding was, thus far, the nadir of the 20th-century version of the bitter battles of the 18th and 19th century where judicial nominees were rejected because of partisan and ideological differences. The political judgment of a nominee's fitness for judicial office has found modern day validation in the writings of Yale Law School Professor Charles Black.

In my opinion, Senator KENNEDY stated the correct view during the confirmation of Justice Thurgood Marshall. Justice Marshall's nomination was strenuously opposed by Senate conservatives. The senior Senator from Massachusetts said:

> I believe it is recognized by most Senators that we are not charged with the responsibility of approving a [Supreme Court Justice] only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance.
>
> We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament, and integrity to handle this most sensitive, important, responsible job.

There is no doubt that fundamental differences continue to exist as to what standards of fitness to apply. However, unlike the competency, integrity criteria, the successful application of the political fitness test requires an environment of intense political activity. As the Bork nomination proved, an extensive record of written achievement can create such a fertile environment.

However, the ideological litmus test may be applied differently when the nominee has neither written nor stated sufficient views on particular issues. Thus, the mechanism for determining whether the candidate will pass the political litmus test, may itself become the test. For example, during the Souter hearings, ideological opposition evolved to opposition based upon the nominee's failure to answer specific questions relating to issues that are most certainly to come before the Court.

With this new approach, those opposed to Judge Souter have tried to apply their political litmus test in a different fashion. Unhappy that the nominee has not provided any so-called controversial material—disagreement with the questioner's position—upon which to oppose the nominee, some would reject him for not commenting on issues of a future case before the Court. It started with general concerns about the open-mindedness of the candidate:

> David Souter must assure the Senate and the public that he has an open mind, is forward-looking and has a vision of the Constitution which respects individual rights. If he fails to meet this burden, the Senate should withhold its consent. (Nan Aron, Director, Alliance For Justice)

Later, the demand for David Souter's personal views on specific constitutional issues arose.

While I agree that a nominee should have an open mind, any questioning beyond a genuine effort to determine this openness is clearly inappropriate. Likewise, any attempt to elicit a specific response regarding an issue which is reasonably expected to come before the Court in the future is fundamentally unfair to any future parties and a violation of the judicial canons of ethics.

Moveover, such tactics begin to impinge upon an even greater principle, the constitutional doctrine of separation of powers. Warren E. Burger, in commenting on what he characterizes as a new assault on the independence of the judiciary, refers to this line of questioning as an inquisition. He states that the practice of calling upon Supreme Court nominees to answer questions in advance of how they would vote on specific constitutional issues is demeaning to, and a corrosive action upon, the Court and its necessary independence:

> Does such an inquisition not demean and undermine our historic separation of powers? If Senators can commit a future justice as to how he or she will decide a particular case, who then is construing the Constitution? Where does this place the high duty of constitutional interpretation?
>
> Now the question is whether the American people are witnessing a confirmation process in which special interest groups have flooded Senators with questions demanding advance commitment from the nominee as to what his or her vote will be on some pet subject.

Justice Burger was further quoted as saying:

> Of course, no nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined in detail before the Supreme Court with all the nuances that accompany a constitutional case.
>
> To expect a nominee to make commitments, or even to engage in substantive discussion of a case yet unseen, borders on the preposterous. Judges, like Senators and Presidents, while entertaining general impressions on a subject, have been known to change their minds when they have all the facts and circumstances as distinguished from some hypothetical proposition.

Lloyd N. Cutler, counsel to former President Jimmy Carter, in a written article disapproving of this type of questioning of Judge Souter, wrote:

As Prof. Charles Black has noted, the Court is the great legitimator of our government, the final arbiter of whether or not the executive and legislative branches have exceeded or abused their limited powers. To perform this vital function, the Court must be, and must appear to be, as independent of the President and of the Congress as humanly possible. While the President must appoint and the Senate must confirm or reject the nominee, it is vital to the integrity of the process that neither they nor the rest of us insist on knowing in advance how a new Justice is going to vote in a particular case.

The key to the Court's critical constitutional role lies in the mystery of its future actions. If the Justices appear to have committed their votes to the President, who appoints them, or to the Senate which confirms them, we will no longer trust them as our ultimate authority on the Constitution's meaning.

In August, speaking before the American Bar Association, Supreme Court Justice John Paul Stevens warned against either the executive or legislative branches trying to determine in advance the views of the nominee:

You really wouldn't want a judge who would say in advance how he or she would vote on particular issues. That's not part of the independent judiciary that's such an important part of our tradition and our history.

I continue to believe that the Senate should reject the political litmus test. I also believe the Senate should reject any test requiring a nominee to state in any substantial way how he or she will vote on a particular issue that may come before the Court.

Mr. President, regarding Judge Souter's qualifications, it is quite obvious that after 5 days of hearings and 40 witnesses, Judge Souter's competency is certainly not in doubt. The American Bar Association's standing committee on the Federal judiciary has given him its highest rating, "well qualified." As both a lawyer and judge, his peers have spoken of his brillance and his outstanding intellectual capacity.

As to the second criterion, judicial achievement, Judge Souter is also very qualified. He has served with distinction in the following New Hampshire offices—assistant attorney general, attorney general, State superior judge, and State supreme court judge. Most importantly he has a depth of judicial experience including the hands on experience of a trial judge, a significant skill and perspective to take to the Higher Court. With his current position on the U.S. Court of Appeals, Judge Souter has 12 years on the bench. In fact, he has more judicial experience than all but one of the current Justices had at the time of their confirmation. John Broderick, a former New Hampshire Bar Association president, said of his judicial ability, "he's a judge's judge, extraordinarily talented and impeccably fair."

Judge Souter clearly meets the exacting standard of excellence. Academically, Judge Souter, a Phi Beta Kappa, graduated magna cum laude from Harvard College. Afterward he studied at Oxford University for 2 years as a Rhodes scholar. He completed his academic and professional studies at Harvard Law School. A "first rate scholar," says a former president of the New Hampshire Bar Association.

Last, a thorough examination of his background has found his judicial propriety and personal integrity to be above reproach. Even his most severe critic makes no challenge regarding Judge Souterh's personal or professional honesty. The ABA's standing committee stated that "Judge Souter's integrity, character, and general reputation appear to be of the highest order and without blemish."

In conclusion, Mr. President, under these standards of fitness I will vote to confirm Judge David H. Souter as Associate Justice to the Supreme Court.

Mr. COATS. Mr. President, in the last several years the Senate's constitutional role of advise and consent has lost its way in a thicket of policy debates and partisan agendas. Recent confirmation fights have scarred the process with bitterness and distortion. Senate hearings have become political inquisitions, rehashing the shifting debates of current elections.

But with the nomination of Judge Souter, we have the opportunity to defy the recent past.

To begin with, we must relearn a basic principle, a principle concerning how the Senate should treat the President's Supreme Court appointments. A principle about what the power of nominations means.

This is not a debate we conduct in a vacuum. The doctrine of advise and consent was given considerable attention by the founders. Alexander Hamilton wrote that the Senate should approve a president's nominee unless there were *"Special and strong* [emphasis mine] reasons for refusal." And further, that when the Senate oversteps its proper bounds, the result is "the full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly."

Senator George Cabot of Massachusetts wrote in 1799, "I have always rejected the idea of non-concurrence with a nomination merely because the nominee was less suitable for the office than thousands of others: He must be positively unfit for office, and the public duty not likely to be performed by him, to justify in my mind the non-concurrence. It has always appeared to me that a departure from this principle would soon wrest from the President altogether the essence of nominating power, which is the power of selecting offices."

A judicial nomination is not properly a political struggle for the direction of the court between executive and legislature. That decision was made in a national election 2 years ago. The president has earned the right to make his choice under the Constitution. The Senate, quite simply, has no political role in this process at all. The criteria for our judgment is character, experience, and intelligence—these minimum standards of fitness. These limited determinations exhaust our appropriate involvement.

But with Judge Souter, we can say more than the undisputed fact he is fit for office. We can say he will bring exceptional talents, temperament, and knowledge to the court. This nominee merits more than grudging acceptance. He deserves our strong support.

His academic record is unexcelled. His service to New Hampshire as attorney general was outstanding. His tenure on the New Hampshire supreme court was distinguished. He is a scholar of the law and an individual of personal loyalty and religious conviction.

But above all, he takes it as his purpose to ensure fidelity to the words of the Constitution and the original intent of the framers. In a 1986 case Judge Souter wrote that "the court's interpretive task is to determine the meaning of * * * [constitutional language] as it was understood when the framers proposed it."

Some have attempted to define this approach as a variety of extremism. But it was once the dominant view of constitutional law.

Justice Nathan Clifford, in 1874, summarized this attitude, "courts cannot nullify an act of the legislature on the vague ground that they think it is opposed to a general latent spirit supposed to pervade or underlie the Constitution. * * * Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the Constitution and the people, and convert the government into a judicial despotism." Justice Felix Frankfurter, about 90 years later, reflected, "as a member of this court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard."

I am convinced that the job of the judge is the application of the law, not the creation of new laws. The Supreme Court should be an instrument to check Federal expansion, not an instrument of Federal expansion. It is a principle, by every indication, that Judge Souter supports.

The alternative is to turn the court into a source of unpredictable interventions in policy debates. Judges become oriented toward political outcomes. Courts become political tribunals, and the consequences for democracy are profound.

Important decisions are taken out of the hands of voters and put into the hands of unelected judges. "If this is all that judges do," wrote Alexander Bickel, "then their authority over us is totally intolerable and totally irreconcilable with the theory and practice of democracy." Justice Hugo Black, who was occasionally guilty of the sin he condemns, warned that the Nation could "cease to be governed by the law of the land and instead become one governed ultimately by the rule of judges." He preferred to put his faith in the words of the written Constitution itself rather than to rely on the shifting, day-to-day standards of the fairness of individual judges." Abraham Lincoln said that under an activist court, "the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

We cannot predict what decisions the court will be forced to make in future years. Issues change from decade to decade, even from year to year. The things that seem most important today may be relegated to footnotes in the dissertations written when the century turns. The most important attribute of a judge is his judicial philosphy and temperament, not his stand on current and shifting political debates.

By this standard, the president has made an excellent choice. He has appointed a candidate of judicial distinction and judicial restraint—a judge who will leave to legislators the business of legislation. And I hope the Senate will respond with its careful consideration and overwhelming support.

Mr. COHEN. Mr. President, the Senate's role in judicial appointments, and particularly the appointment of members of the U.S. Supreme Court, is one of its most important functions. In fulfilling its constitutional duty of advice and consent, the Senate shares with the President the critical responsibility of shaping the quality of the Federal judiciary and, therefore, the quality of justice in our Nation.

Although there may appropriately be a strong presumption in favor of a Presidential nominee, each Senator has an obligation to evaluate the qualifications and competence of those individuals nominated by the President in order to meet the responsibility imposed by the Constitution. After reviewing with some care David Souter's academic and professional qualifications, and his writings and testimony before the Judiciary Committee, I believe that Judge Souter should be confirmed for a seat on the U.S. Supreme Court.

The Judiciary Committee's hearings on the Souter nomination were lengthy and comprehensive. With few exceptions, the members of the committee and those who watched the hearings were impressed with Judge Souter's intelligence, his thoughtfulness and his strong streak of independence. His background is equally impressive, from his notable educational credentials to his experience as a State attorney general, trial judge, and New Hampshire Supreme Court justice.

The Standing Committee on the Federal Judiciary of the American Bar Association unanimously found Judge Souter to be "well qualified," its highest rating. The president of the New Hampshire Bar Association testified that "those of us who have witnessed Judge Souter's judicial performance firsthand can, in good conscience, report to this committee that he possesses * * * a first-rate legal mind, a flexible and curious appetite for the law, an unbiased ear for argument, an uncommon civility and * * * a quiet compassion."

There is, of course, uncertainty on how Judge Souter will rule on issues of considerable importance, particularly the issue of abortion. Many individuals and organizations who support a woman's right to choose, including myself, have reservations about what Judge Souter will do once he is on the Court. However, I am convinced by Judge Souter's testimony that he brings no personal agenda to the Court, and that he will be an open minded, fair and compassionate jurist.

I do not believe that Judge Souter's intelligence, his integrity, his respect for the rule of law and the Constitution, or his commitment to the fundamental principles of justice and equality can be questioned. It is by these standards, together with professional competence, that Judge Souter and other nominees to the Federal judiciary should, in my opinion, be judged. I believe Judge Souter has demonstrated the kind of qualities that will make him a fine addition to the U.S. Supreme Court.

Mr. ROBB. Mr. President, I rise to declare my support for the confirmation of Judge David H. Souter to the Supreme Court of the United States.

I followed Judge Souter's testimony before the Judiciary Committee with interest. He was questioned at great length and, at times, sharply. Yet I did not hear anything which would cause me to vote against his nomination.

Judge Souter's objective academic qualifications are superb. More persuasive, though, was the subjective evidence offered on his behalf by a number of witnesses, including two former Democratic attorneys general of Virginia, one of whom was my successor as Governor.

Many people have raised concerns not about what was said in the Judiciary Committee, but about what wasn't said. While I share the concerns of many about critical issues, including the right to privacy, I was impressed by Judge Souter's apparent willingness to listen to the arguments presented to him. In casting my vote on his behalf, I add my fervent hope that Judge Souter's openness and willingness to listen remain hallmarks of his service as Associate Justice of the Supreme Court.

Mr. HATFIELD. Mr. President, I will vote to confirm the President's nomination of Judge David Souter to the Supreme Court when the Senate turns to this matter later today. Like the majority of my colleagues, I was enormously impressed by Judge Souter's personal decency, intellectual capacity and legal expertise during his recent testimony before the Senate Judiciary Committee. I will cast my vote for Judge Souter with full confidence that his will be a voice of reason and fairness on the bench in the years ahead.

The fact that this nomination comes at a time when our Nation's attention is focused on Roe versus Wade has forced all of us to think long and hard about how we view the Supreme Court and how we approach the Senate's confirmation process. I want to share briefly with my colleagues some thoughts on this nomination, on this process and on the complicated and sometimes polarizing times in which we live.

Undoubtedly, there are organizations and individuals who will accuse those of us who vote to confirm Judge Souter of being insensitive to their concerns and to their depth of commitment. That charge cuts to the heart of what I believe is a very serious misunderstanding of this confirmation process.

If part of our constitutional responsibility to give our advice and consent regarding a judicial nomination involved making sure that the nominee's views on specific issues match our own, I am afraid I would never be able to support a judicial nomination. I certainly would not be able to support this one. Why? Because I know where Judge Souter stands on an issue I care and feel deeply about: the death penalty. Unlike abortion rights activists whose opposition to this nomination stems from the fact that they do not know where Judge Souter stands on Roe, I know where he stands on the death penalty. He stands firmly on the other side of the issue. As deeply and strongly as some people feel about Roe I feel just as deeply and strongly that the death penalty is not merely wrong but fundamentally immoral.

Perhaps there are those who will argue that my opposition to the death penalty is somehow rendered meaningless by my willingness to confirm a Supreme Court nominee who disagrees with my position—just as there are those who will question the commitment of abortion rights Senators who vote for a nominee whose position on abortion they do not know. But, Mr. President, I do not exaggerate when I suggest that this single-minded vision, if it prevails, could destroy our democracy.

Our population is infinitely diverse in race, ethnic origin, economic status, religion, and personal values. Our States and regions are equally diverse in history, geography, and economic base. This pluralism and individualism argues against our survival as a nation. But we have survived—despite often bitter debate and a bloody Civil War. We have survived because our forefathers gave us a constitutional government based on pluralism and individualism, and a Supreme Court free of daily political pressures.

To apply a single-issue litmus test to a Supreme Court nominee would be to contravene the fundamental principles of American democracy. As the Oregonian stated in its September 20, 1990 editorial "* * * spokesmen for abortion-rights and women's groups are wrong in trying to make Souter's position on Roe versus Wade [sic] the sole test of whether he should be confirmed." I agree and refuse to apply such a test in the case of Judge Souter.

Unfortunately, Mr. President, I am convinced that the highly charged political atmosphere in which Judge Souter has found himself is largely a problem of our own making. On one hand, I give great credit to my colleagues who refuse to allow this nomination, and indeed this entire process, to become a series of political litmus tests. But on the other hand, I am increasingly convinced that the very fact that all judicial nominees are now greeted with more questions about politics than about principles is a direct indictment of us and of what this process has become.

We have allowed this political polarization to occur—indeed we have fostered an environment in which single-issue politics flourishes and prevails—by being more interested in ducking the tough issues than a taking responsibility for them. This legislative paralysis has resulted in people looking to the courts for political activism. That is not only wrong, it is also dangerous.

We live in enormously complicated and increasingly polarized times. But that fact simply underscores the urgent need for both the continued integrity of the Supreme Court and for Congress to take responsibility for the tough issues at hand. Voting to confirm Judge David Souter's nomination will ensure the former. But only we can ensure the latter.

Ms. MIKULSKI. Mr. President, the Constitution requires that Members of the U.S. Senate advise and consent to a Presidential nomination for a vacancy on the Supreme Court.

Once consent is given, a Supreme Court Justice may serve for the rest of his or her life, virtually unaccountable to any person or group.

This is as it should be. We don't want our Supreme Court to be swayed by momentary Presidential passions, or forced to choose between justice and votes.

In return for our consent, however, the Members of the U.S. Senate have a right to know for whom we are voting.

I have no doubt that Judge Souter is professionally competent. Nor do I question his personal integrity.

But I cannot cast my vote to confirm a man who has been silent, vague, or evasive every time he has been asked if he would uphold fundamental constitutional rights—rights of concern to every American and particularly of concern to America's women.

Judge Souter has refused to discuss how the Constitution's guarantee of equal protection under the law protects women against gender discrimination; and he has refused to discuss the fundamental right of privacy.

Through most of the Senate's confirmation hearings, Judge Souter dazzled us with his wit and intelligence. He discussed at great length many areas of the law with which he will have to deal. He spoke on issues of desegregation, the death penalty, and the separation of church and state.

But whenever questioning turned to the constitutional rights of women the eloquent Judge Souter became the intractable and laconic New Englander of legend.

And so today, we do not know if Justice Souter would vote regarding women under the protection of the Constitution.

We don't know if Justice Souter would vote to protect a woman's right to decide when and if to bear a child.

Mr. President, women were not even allowed to vote in this country until 1920. Only 16 women have ever stood on the floor of this Chamber as a U.S. Senator. Only in the last generation have many women truly started to gain control over their lives, their careers, and their families.

And we still have far to go.

We have worked too hard and come to far to accept silence and evasion from a Supreme Court nominee.

The U.S. Senate represents 250 million Americans. We cannot act on their behalf without candor and from men like Judge Souter.

I respectfully submit that it is not acceptable for a Supreme Court nominee to conceal his views of the critical constitutional issues of the right of privacy.

I cannot make a leap of faith for Judge Souter. I will vote against his confirmation.

Mr. KERRY. Mr. President, as I contemplate a vote on this nomination, I know that Judge Souter will be confirmed overwhelmingly. I doubt there will be more than 10 votes against him. So I am voting on a nomination that is not in doubt.

Judge Souter has been impressive in the confirmation process. He is obviously extraordinarily bright and articulate, and worthy of the high regard in which he has long been held by my friend Senator RUDMAN, whom I respect greatly.

There is no question of the potential for Judge Souter to make a significant contribution to the Supreme Court, in the tradition of Justice Harlan—a goal he has set for himself.

He may well be as some have said, "the best nominee we could expect from this President."

But while there is a great deal that commends this nonimee to me and urges me to vote for him, I want my vote to underscore my deep concern about two areas.

On civil rights and on women's rights there are significant questions about Judge Souter which loom large enough to justify a vote against this nominee. This seat is a critical seat on the court at a critical moment in its history.

Many of my colleagues have come to the floor and bemoaned the gaps in their knowledge and in the record about Judge Souter's philosophy in these areas. They have also expressed concerns about some of the things he did say.

For example, in his testimony, Judge Souter distinguished between "marital privacy" which he stated "can and should be regarded as fundmamental" and other privacy, "not every aspect of [which] may rise to a fundamental level."

Judge Souter suggested that in the privacy area, one had to engage in a balancing test, under which any fundamental State interest can be balanced against the fundamental interest of the individual to determine which interest shall prevail—the individual's right of privacy, or the "fundamental right" of the State, which Judge Souter did not define.

There are two problems here, and both are serious.

First, because Judge Souter is vague as to what might constitute a "fundamental interest" of the State, in theory, he might find that almost any interest of the State could be determined to be "fundamental." Judge Souter's balancing test here might be interpreted as requiring only some-

thing more than a rational relationship test. The test implies that Judge Souter might well agree to loosen current constitutional restraints on the ability of Government to intervene in people's private lives.

Second, Judge Souter explicitly, carefully, and definitively distinguished the right of privacy of people who are married from those who are not. The former have a fundamental right, according to Judge Souter, looking back to the intent of the Founding Fathers; the latter have some rights, but these may not be fundamental, Judge Souter testified.

This is an odd and disturbing distinction. Unfortunately, Judge Souter refused to answer other questions which would have more fully explained the practical meaning of the distinction, so it is difficult to understand the meaning of the distinction. Nevertheless, it is a troubling one.

These are examples only, but they suggest why so many of us find this nomination to be, as in the words of Senator BIDEN, "a hard case," requiring a difficult choice.

In the past, I have voted for Justices whose judicial philosophies were far from the approach that I would like to see taken by the Supreme Court, including Justice Scalia and Justice Kennedy.

Today, I have decided to make a different choice to carry out my responsibility of advise and consent. I choose with my vote to express my concern about the future of civil rights and women's rights, and therefore will vote against this nomination.

Mr. HUMPHREY. Mr. President, my remarks will be brief, since Judge Souter's eminent qualifications for confirmation as a Supreme Court Justice have been thoroughly demonstrated and discussed.

Needless to say, New Hampshire is extremely proud of Judge Souter. His legal and judicial accomplishments, and his lifelong commitment to public service, were already well-established before the confirmation hearings began.

But if there were any doubts about Judge Souter's fitness for the High Court, they were demolished by his impressive demonstration of legal knowledge and unflappable judicial temperament during the ordeal of confirmation hearings. Once his testimony was completed, even the skeptics understood what those from New Hampshire have known for years: Judge Souter has the "right stuff" to serve with distinction on the U.S. Supreme Court.

Of course, no nominee for the Supreme Court can be "all things to all people", and Judge Souter is no exception. To his credit, he declined to yield to the demands of those who sought a pre-confirmation commitment on crucial issues that will be coming before the Supreme Court in future cases. Ironically, Judge Souter's demonstration that he would listen with a fair and open mind to the arguments on such issues was attacked as grounds for opposing him by those who demanded a pledge to rule their way in future abortion cases.

I am pleased to see that these blatant assaults on the principle of judicial independence have failed to carry the day. Many of the same groups that conspired to defame Judge Bork 3 years ago have called for the rejection of the moderate Judge Souter because he has declined to endorse their liberal agenda before taking a seat on the Court.

Although a few Members have heeded that call, I am confident that an overwhelming majority of the Senate will reject it. Any other result would cause irreparable damage to judicial independence.

In that regard, it is also important to recognize that portions of Judge Souter's testimony were of little comfort to those who seek a more conservative judiciary. I readily admit that some of his testimony was a bit disturbing to this Senator. For example, I do not share his assessment that Justice Brennan has been a peerless defender of the Constitution—at least not the Constitution that I know. His testimony also indicated that Judge Souter needs to be more sensitive to the dangers of judicial usurpation of legislative powers. I suspect that this may be attributable to the fact that he has spent his judicial career in the relatively sane environment of the New Hampshire courts. After a few months exposure to the excesses of some of the Federal courts, I am confident that he will develop a keener appreciation of this problem.

While Senators on both sides of the aisle may have their individual reservations on various issues, it is clear that Judge Souter is a sound and solid choice for the Supreme Court at this time. The American people entrusted President Bush with primary responsibility for selecting Supreme Court Justices in the last election, and he has chosen well.

Judge Souter has demonstrated a rare combination of qualities which will serve the American people well—a keen understanding of the Constitution coupled with a strong sense of fundamental fairness. I strongly support his confirmation and urge my colleagues to do the same.

Mr. LIEBERMAN. Mr. President, after careful consideration, I have decided to support the nomination of Judge David Souter to the U.S. Supreme Court. This is based upon my own conversations with Judge Souter, the material we have received from both supporters and opponents of his nominations, Judge Souter's testimony before the Judiciary Committee and the committee's report and additional and dissenting views.

I have concluded that Judge Souter is extremely well-qualified for the position of Associate Justice of the U.S. Supreme Court. He has received the highest rating of the American Bar Association's Standing Committee on the Federal Judiciary. His long experience as an attorney general, a trial judge, and a State supreme court justice gives him a great deal of perspective on, and sensitivity to, the effect of his decisions on litigants and the judicial system. He clearly is very intelligent, and capable of rendering well-reasoned decisions solidly grounded in both the facts of the case and the law as he interprets it.

I, of course, have no greater insight than any of my colleagues into what result Judge Souter would reach in specific future cases. I nevertheless will vote to give advice and consent to his nomination because I believe that he will approach the issues before him with an openmind in an attempt to reach a fair and reasoned conclusion. A judge must decide each case in the light of the facts and arguments presented, and the law as it stands at the time judgment is rendered. I believe Judge Souter will do this, that he will not decide these cases in the abstract, and that he will not join the Supreme Court with an agenda to fulfill.

I am comfortable that, in voting to confirm Judge Souter, we will place on the Supreme Court a man who will approach the new legal issues of the next century in a careful, methodical, and analytical manner. I believe Judge Souter will serve with honor and distinction. I will, therefore, vote to confirm Judge Souter as an Associate Justice of the U.S. Supreme Court.

Mr. HEFLIN. Mr. President, I come to the floor today to reaffirm my announced position on the confirmation of Judge David Souter to be Justice on the U.S. Supreme Court. I strongly believe that Judge Souter has the necessary qualities to be a Justice on the Court, and I will vote in favor of his confirmation.

I believe that Judge Souter will bring to the Supreme Court strong credentials will serve him well over the course of his tenure on the Court. His academic background is clearly outstanding, and his legal experience more than adequately qualifies him to sit on this Nation's Highest Court. Further, I believe that Judge Souter will bring the reflected values of a small town that is tightly knitted, that cares about its neighbors, and that reflects traditional American concepts of respect for the rights of others and respect for a fair and just society.

I accept Judge Souter's responses to the committee's questions on a wide range of legal issues. I believe that he will respect precedent and be a faith-

ful guardian of the Constitution. Further, I know that Judge Souter will bring a historical perspective and a clear-headed approach to the analysis of issues which will come before him.

In conclusion, I wish to add my voice to the chorus of support which has followed this nominee, and I urge my colleagues to vote in favor of his confirmation.

Mr. CONRAD. Mr. President, I rise to speak in support of the nomination of David H. Souter to be an Associate Justice of the U.S. Supreme Court.

Judge Souter was nominated by President Bush to replace one of this century's most vigorous defenders of individual liberties, Justice William Brennan. In his 34 years on the Supreme Court, Justice Brennan authored more than 1,200 opinions. He leaves a legacy that extends from Baker versus Carr—a decision that enunciated the one-man, one-vote principle and opened the courts to litigation over voting rights—to the case New York Times versus Sullivan—a case which is the basis for the expansion of first amendment speech and press guarantees that we have seen in this century. Justice Brennan's principled application of constitutional protections has made this country a better place to live for many Americans.

Justice Brennan's departure also means that his replacement will step onto a court fiercely divided over issues like the separation of church and state, the question of exclusion of illegally seized evidence from State and Federal trial proceedings, and the issue of privacy, to name just a few. It is indeed a pivotal time for the U.S. Supreme Court.

Mr. President, in the fall of 1987, the Senate and this Nation experienced one of the most divisive confirmation battles in our history. It was during that year—my first in the Senate—that I realized that there were few Senate responsibilities more solemn than the constitutional duty of advise and consent. Nominees to the High Court face the prospect of deciding cases when every Member of this body is long gone. They may cast deciding votes on issues which we cannot even imagine today. Our decision to approve a nominee cannot be amended. There is no omnibus bill to revisit approval of a nominee. It is a decision we can only make once, and it must be wisely made.

I hold deeply to the view that the Senate has a coequal role in the nomination of Supreme Court Justices. It surprises advocates who argue for Presidential deference to know that in one early draft of the Constitution, the U.S. Senate was the body which chose nominees to the High Court. The current partnership between the Senate and the White House was settled on to provide an appropriate balance between the branches.

While the Constitution confers on the Senate the duty to share the responsibility of nominating a Justice, it does not give guidance on the criteria for evaluation of such nominees. Each Senator must develop his own standards. The nominee must be intelligent, honest, and competent. The nominee must also possess a deep understanding of the constitutional issues that have been crucial in this nation since its inception: State and Federal powers and the rights and liberties of all individuals.

Our duty in this body, then, is to elicit the views and thoughts of Supreme Court nominees. Accordingly, I closely followed the nomination of Judge Souter. I watched or reviewed the tesimony from his confirmation hearings. I solicited the views of members of the bar of my own State of North Dakota. I conferred with Members of this body on the nomination of Judge Souter. And, finally, I was fortunate to have the opportunity to meet and spend some time with Judge Souter.

From this examination, a very clear picture of Judge Souter has emerged: A highly intelligent, dedicated jurist who has an impressive command of the issues that may come before the U.S. Supreme Court.

Judge Souter is clearly qualified to serve on the Supreme Court. His legal career is very impressive, and his experience spans almost all aspects of the legal profession. His decision to dedicate much of his career to public service is laudable. Colleagues who have opposed him in Court, or who have lost cases before his court, have universally applauded his intellect, his dedication to fairness, and his judicial temperament.

His appearance before the Senate Judiciary Committee demonstrated that he possesses an impressive command of modern constitutional issues. He spoke knowledgeably about issues that have occupied the Court in the 20th century, including the separation between church and state; civil rights; Federal affirmative action programs; the guarantees of free speech and the free exercise of religion; the constitutionality of the death penalty; the relationship among the various branches and levels of Government; the powers and limits on powers of the State; and the rights and liberties of individuals.

I will vote to confirm Judge Souter, but I had one concern. While I understand the Judge's personal view that he could not comment on issues which might prejudge cases that could come before the Court, I was dismayed with what I thought was selective application of this principle.

For instance, when asked by Senator SPECTER about his view of the free exercise clause as expressed in the case involving the use of peyote by drug counselors, Judge Souter said:

> On the free exercise question, I have to be circumspect to a point because I believe that the Smith case is subject to a motion for rehearing presently before the Court. But I think there are some things that with a reasonable degree of specificity I can say.
>
> The first is that I do not come here and prior to the decision of that case or after it I have not had personal reason to want to reexamine the strict scrutiny test which has been applied in a lot of cases since Shurbert. I recognize the reasoning of the majority opinion. I mean I can follow it; I understand what the Court was saying in the Smith case. But I also recognize I think the fact that case could also have been examined under the Shurbert standard. As you mentioned or indicated a moment ago, that, of course, is exactly what Justice O'Connor did in her concurring opinion in that case. (Transcript, September 14, pp. 47-48)

This amplification of views on the free exercise clause is utterly appropriate, in my view. And, yet, in response to questions in any way related to Roe versus Wade or the War Powers Resolution, for example, Judge Souter invoked his prohibition on responding. In response to the very next question posed by Senator SPECTER, Judge Souter stated:

> The first is, of course—and I know you recognize this—that because of the reasonable likelihood that the constitutionality of the War Powers Resolution could come before the Court in some guise, I cannot give an opinion on the constitutionality of that.

Judge Souter, in fact, refused to reflect in any way on some key constitutional questions. I agree that he should not have to indicate how he would vote in particular cases, but he could discuss his views on many issues without revealing the way he might vote.

This pattern greatly concerns me because I fear it may betray a lack of candor on issues which might provoke opposition from this body. I oppose the single-issue politics which may have fostered this strategy, yet I believe Judge Souter could have forthrightly replied to many of the questions that he declined to answer without jeopardizing his independence or integrity on the bench. His refusal to answer these questions has left the Senate to consider his nomination without knowing his views on the pivotal issues of civil rights and race and gender discrimination, the right to privacy, Federal powers, biomedical ethics, and many others. He has tried to calm the fears of concerned Senators by assurances that he will listen. I believe that he will listen, but I fear that he has not fully revealed views that should appropriately be discussed.

I hope, Mr. President, that I am wrong and this was not a concerted strategy, but I must agree with my colleagues on the Judiciary Committee

and express my dismay at Judge Souter's unwillingness to answer crucial questions on some major constitutional issues of our day.

Mr. President, despite this concern, I shall support the nomination of Judge Souter to the U.S. Supreme Court. I found him in our meeting together to be an open, learned individual. I believe his statement that he shall listen to those who come before the Court. I believe that he truly understands that millions of Americans' lives may be affected by decisions he renders. This is an awesome responsibility, and he has convinced me that he is worthy of the trust and confidence of the American people.

Mr. NUNN. Mr. President, I rise today to announce my support for the nomination of Judge David H. Souter to the U.S. Supreme Court. I believe that he is a well-qualified individual who will serve with distinction on our Nation's highest court.

Judge Souter has an impressive academic record and a career of distinguished public service. Following his graduation from Harvard College in 1961, he was selected as a Rhodes scholar and attended Magdalen College, Oxford, between 1961 and 1963. He then enrolled in Harvard Law School and was graduated in 1966.

In his first job out of law school, Judge Souter practiced law in a private firm in Concord, NH, and 2 years later began 10 years of service with the State attorney general's office. In 1976, he was appointed attorney general for the State of New Hampshire, a position he held for 2 years until he was appointed to the superior court bench. Five years later, he was named an associate justice of the New Hampshire Supreme Court. Earlier this year, President Bush nominated Judge Souter to the First Circuit Court of Appeals.

I believe that Judge Souter's life time commitment to public service makes him a good candidate for the Supreme Court. From my review of the Judiciary Committee's hearing records and from my conversations with colleagues, I am convinced that Judge Souter will not be an ideologue with an agenda, but rather a temperate jurist. I believe that he has the intellect and integrity to fulfill his constitutional duties as an Associate Justice of the Supreme Court.

Finally, I believe that Judge Souter will not be judicially rigid. Instead, it is my hope that he will decide the cases that come before him with a healthy application of common sense. It is my view that our Founding Fathers intended to set forth general principles which would remain the foundation of our Nation and that they viewed the Constitution as a living document to be interpreted with common sense in light of changing circumstances and conditions. Mr. President, I believe that Judge David Souter will use such a standard and will serve our Nation well.

Mr. DOMENICI. Mr. President, I rise today to express my support of the confirmation of Judge David Souter to be an Associate Justice of the U.S. Supreme Court.

Under the Constitution, the Senate has the duty to offer advice and consent on judicial nominees. Our primary concerns when confirming a nominee for the Supreme Court should not focus on specific issues, but rather on the nominee's ability to serve on our Nation's Highest Court.

The Senate must determine whether the individual that the President has nominated has the competence, integrity, temperament, and respect for the basic principles of our constitutional system necessary to serve as a Justice of the Supreme Court. I am convinced that Judge Souter possesses these qualities.

First, a Justice must be a person who has exhibited exceptional competence in the law: He or she should be learned in the law and have extensive experience in the practice of the law.

Judge Souter graduated magna cum laude and Phi Beta Kappa from Harvard University in 1961. He continued his education as a Rhodes scholar at Oxford University in England and then returned to Harvard, where he earned his law degree.

After 2 years of private law practice, Judge Souter entered public service. He was an assistant attorney general of New Hampshire for 3 years, deputy attorney general for 5, and attorney general—the State's chief law enforcement official—from 1976 to 1978.

In 1978, he was appointed to the New Hampshire Superior Court on which he served for 5 years until he was appointed to the New Hampshire Supreme Court. In 1990, Judge Souter was unanimously confirmed by the Senate to be a judge on the U.S. Court of Appeals for the First Circuit, where he currently serves. With his 12 years on the bench, Judge Souter has more judicial experience than all but one of the current Justices has at the time they were appointed to the Supreme Court.

During his confirmation hearings, Judge Souter demonstrated an impressive knowledge and command of constitutional law. Clearly, by reason of his intellect, his education, and his experience, Judge Souter possesses the competence that the American people demand of their Supreme Court Justices. That is why the American Bar Association gave Judge Souter its highest rating and declared him to be "well qualified" to serve on the Supreme Court.

Second, a Justice must be a person with unquestioned integrity: He or she should be honest, ethical, and fair.

Those who know Judge Souter best—his peers in the legal profession in New Hampshire—are united in their opinion that Judge Souter is an impeccably fair man who adheres to the highest ethical standards of the legal profession. His honesty is beyond reproach.

Third, a Justice must be a person with a judicial temperament: He or she should be even-tempered, firm, compassionate, and able to listen to different points of view.

Judge Souter ably demonstrated during his confirmation hearings that he has the right temperament to serve as a judge. His answers were calm and thoughtful. He engaged in a scholarly discussion with the members of the Judiciary Committee, listening to their viewpoints and explaining his with utmost courteousness. Judge Souter also movingly demonstrated that he is a man of compassion when he related his experience of advising a woman who was confronted with an unwanted pregnancy.

Some would question whether an unassuming man who would rather live in a small town, who enjoys the solitude of nature, who prefers books to television, who goes to church every Sunday, and who is devoted to his family and friends has sufficient real-life experiences to function effectively as a judge.

Frankly, Mr. President, I'm not sure I understand this criticism. In any event, Judge Souter—as an active and involved member of his community and as a practicing lawyer and a judge—has been exposed to a broad spectrum of real-life problems. He knows that deciding a case is not an abstract intellectual exercise, but rather is a serious activity that can potentially affect millions of people. As Judge Souter testified:

> Whatever court we are in, at the end of our task some human being is going to be affected. Some human life is going to be changed and we had better use every power of our minds and our hearts and our beings to get those rulings right.

Fourth, a Justice must be a person who respects the basic principles of our constitutional system: He or she should not be burdened by an ideology that would prevent him or her from being an impartial judge.

During his confirmation hearing and throughout his 12 years as a judge, Judge Souter demonstrated a profound respect for and devotion to the philosophical underpinnings of our American democracy—federalism, separation of powers, freedom of speech and religion, individual rights, equal protection, due process, and the rule of law.

I am convinced that he will adhere to the doctrine of judicial restraint and will interpret and apply the laws, not impose his own political views. He

has an independent mind and has no ideological agenda that he seeks to fulfill, except to preserve the Constitution of the United States.

Mr. President, in the case of Judge David Souter, President Bush has nominated an individual who has demonstrated throughout his lifetime that he possesses those traits. He is extremely well-qualified to sit on the Supreme Court, and I will vote to confirm him.

Mr. BUMPERS. Mr. President, few events in my career have struck as close to home as Justice Brennan's decision to retire. The Senate's duty to advise and consent to a successor to a Justice of such unique stature is especially heavy. That successor will likely be serving out a life term at the top of our third branch of government long after most of us in this body are gone from here. When Justice Brennan announced his retirement, I hoped the President would put aside any ideological agenda and try to find the best qualified person in the country for this job. I have no way of knowing whether Judge Souter is that person or not.

Many things in his record commend him for service on the Court. First, he will be the first former trial judge in recent memory to serve on the Nation's Highest Court. As a former trial lawyer, it gives me great comfort to think that someone who has actually tried lawsuits will be sitting in judgment over important cases. One of the most well-founded criticisms of the Court, it seems to me, is that too often the Justices have little familiarity with the realities of trial practice.

Without belaboring the facts, Judge Souter has an enviable record of accomplishment as a lawyer. He was graduated from Harvard University and Harvard Law School. He has been deputy attorney general, attorney general of New Hampshire, a trial judge and State supreme court justice, and earlier this year he was confirmed by the Senate as U.S. circuit judge for the First Circuit.

My hesitation is not over any qualms about Judge Souter's character. From every report, he is a man of unquestioned integrity and certainly has an outstanding educational and professional background. He appears to be a very traditional New Englander, conservative in his appearance, manner and thinking.

I am somewhat reassured that Judge Souter is highly recommended by a respected Senator on the other side of the aisle, WARREN RUDMAN.

I have studied the record of the confirmation hearings before the Judiciary Committee. It goes without saying that when the Constitution is being discussed I pay attention to what's being said. Judge Souter said little with which I would disagree, and he was genial and accommodating. Frankly, his answers were not very reassuring for the right wing of the President's party.

Yet, still, there are those who say he is a wolf in sheep's clothing who will give a narrow berth to constitutional liberties. There are at least two kinds of conservatives—those who believe the State can do no wrong and those who believe that governmental restraints on the individual must be strongly justified. For too long, the former have dominated the debate. Judge Souter seems to have a Jeffersonion streak about him.

I cannot see into David Souter's mind and know what he will do when faced with issues surrounding Roe versus Wade and its progeny. The Court has already ensured, however, that there will be plenty such cases on the docket. We have seen draconian measures enacted in Guam and Louisiana, and more are sure to come. While I wish I knew more of Judge Souter's true feelings on a number of issues, I think he acquitted himself well enough in his hearings to receive the benefit of the doubt. I will resolve that doubt in his favor.

Mr. KERREY. Mr. President, I plan to vote to confirm Judge Souter as a Associate Justice of the Supreme Court.

This is my first vote on a Supreme Court nomination, and I wish to set out the standards that I believe should guide such decisions. I believe there are three. While I have reservations about Judge Souter's record, which I will discuss, I believe he has met these three standards.

The first standard I would invoke asks whether the nominee has a distinguished judicial record. While Judge Souter's credentials as a nominee do not rise to the level of some of the titans of the Supreme Court's history, his record is nonetheless distinguished. He has served as a State attorney general; a State superior and supreme court justice; and a judge for the Federal court of appeals. He is known in the legal community for an inquiring and exacting legal intellect. He received the highest rating from the American Bar Association's Standing Committee on the Federal Judiciary. His personal integrity and ethical standards are beyond reproach.

The second standard asks whether the nominee is within the Nation's judicial mainstream. Judge Bork was not. Judge Souter is. In the hearings, he accepted certain high standards of protection for the essential freedoms of speech and religion. He indicated his support for certain remedies for racial discrimination. He committed himself to the important concept of deference to precedent, and rejected notions that we should in all cases return to the "original intent" of the Constitution's framers. Judge Souter is, to be sure, a very conservative jurist. But that is hardly surprising or objectionable given that he was nominated by a conservative President.

The final standards asks whether the nominee has the judicial temperament necessary to sit on our highest court. As I will explain, I am concerned about Judge Souter's sensitivity to political, social, and economic minorities. I am troubled he was willing to act as an advocate, as New Hampshire attorney general, for some official initiatives that smacked of intolerance. Yet Judge Souter's judicial record, which I believe is far more important, suggests that he receives the opinions of all parties before him with an attentive, fair, and open mind. The willingness to listen respectfully to diverse arguments is essential to the credibility of our judicial process.

While I will vote for confirmation, it is with reservations. First, I have serious reservations about Judge Souter's position on abortion. My reservation is that I, like the rest of America, do not know what his position is on the right of women to make the most fundamental choices about reproduction. That is a troubling gap in the record. I am troubled that this nominee and the administration that nominated him do not recognize the right to make such a choice as fundamental. I am troubled that on the difficult choice over abortion they are willing to substitute their moral judgments for those of individual Americans.

At the same time, I find it comforting that Judge Souter recognizes an implicit constitutional right of privacy as "fundamental." And I must take Judge Souter at his word when he says he has not made up his mind concerning Roe versus Wade. We can only hope the Court's other eight Justices will approach this divided and divisive issue with equally open minds.

Second, I have reservations about the level of Judge Souter's sensibilities about society's treatment of women, racial minorities, and religious minorities. Our society today is not the society of 1789. One of the journeys of our time has been toward expanded participation in our economy and society by those who had been excluded in the past. Judge Souter's experience and views, to the extent he revealed them during his confirmation hearings, seem remote from that defining American odyssey.

Let me cite one example. At one point in the hearings, Judge Souter said, "the State of New Hampshire does not have racial problems." Perhaps Judge Souter was characterizing what others would say about his home State; there is some possibility of that from the context. Perhaps all Judge Souter meant is that New Hampshire is racially homogeneous in relative terms. I can understand that. I am also from a State that has a relatively

small proportion of residents who are racial minorities.

Yet one of the Constitution's chief missions is to protect those who are not part of the majority. Thus it speaks to the rights of political, social, and racial minorities of all sizes—not just those who are near-majorities. I am aware that even in Nebraska there are racial problems. Yet the record sadly suggests it might surprise Judge Souter to learn, as I did, that over a dozen racial discrimination complaints were brought over the past year to his State's human rights commission, and that his State has seen many serious racial incidents over the years, as the testimony of witnesses during the hearings made clear.

I hope Judge Souter will hear this message from me and others as he takes his seat on the Supreme Court: Racial discrimination, unfortunately, still exists in every town in America. Sexual discrimination and harassment, unfortunately, still exist in every industry. I hope Judge Souter's constitution, like mine, listens for the voices of victims of discrimination and has something to say to their pain.

Subject to those reservations, Mr. President, I will cast my vote in favor of confirming Judge Souter's nomination.

Mr. WARNER. Mr. President, I rise to join in this debate, for a second time, to express my respect for the work done by the Senate Judiciary Committee and to encourage Senators to give their support for this outstanding nominee for the Supreme Court of the United States.

During the consideration of this nomination, I have solicited the views of a wide range of my fellow Virginians. Clearly the majority—a very significant majority—express confidence in Judge Souter's ability to serve our Nation in this position.

Today, I ask the Senate to consider the opinions of a man whom I respect greatly— Andrew Miller, Esq. In 1978 this distinguished former attorney general of Virginia opposed me in the election for the seat in the U.S. Senate I am now privileged to hold. Our campaigns were fair, by today's standard unbelievably fair and honest. I won by a narrow margin, which reflects the confidence and respect many Virginians held, and still hold, for Andrew Miller.

In the time that has ensued, Mr. Miller has worked with me on a number of public issues. He is very successful in the private practice of law and continues to contribute of his time and wisdom for the public betterment of others.

I greatly value his friendship and have confidence in his views on this nomination.

Mr. President, I will now read to the Senate a letter from Andrew Miller to the President of the United States:

WASHINGTON, DC,
September 24, 1990.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As a former Attorney General of the Commonwealth of Virginia, I write in support of your nomination of David H. Souter as an associate Justice of the United States Supreme Court. I became acquainted with Mr. Souter shortly after I was sworn in as Attorney General of the Commonwealth of Virginia in January 1970. At that time he was serving as an Assistant Attorney General of the State of New Hampshire. From 1970 to 1975, we worked closely together in representing the interests of the Atlantic Coastal States in the case of *United States* v. *Maine, et al.,* 420 U.S. 515 (1975).

During this period, I became very impressed with Mr. Souter's legal abilities. Not only was he willing to work hard but his intellectual brilliance, scholarly research and thoughtful analysis all contributed to the enhancement of the States' position. While the Supreme Court ultimately decided against the States, the Court had greater difficulty in doing so as a consequence of Mr. Souter's contributions in the drafting of the States' papers. Moreover, on a personal level, I found our association extremely pleasant because of his courteous and considerate demeanor.

While Mr. Souter has held a variety of public offices, in the discharge of his responsibilities he has never been political. Indeed, he has not sought opportunities to exercise legislative or executive authority. As you know, the Attorney General of New Hampshire is appointed, not elected by popular vote. During his tenure in that office, and subsequently on the bench, I know of no instance in which his integrity was questioned. He has chartered his course as a lawyer and judge dedicated to excellence in the performance of duty in the justice system.

As a judge Mr. Souter has understood the role of oral argument in ensuring that issues are fully examined. He also has recognized that not every issue brought before a Supreme Court has constitutional implications. I believe that as an Associate Justice his State background will bring a useful perspective to the Court's deliberations. I am also confident that he will not engage in public rhetoric about his fellow justices or about political leaders, which circumspection should benefit the Court institutionally.

The foregoing views are undoubtedly shared by many others who have known Mr. Souter for an extended period of time. I feel compelled to write this letter of endorsement, however, out of my own experience as Attorney General, in light of some of the concerns expressed in the confirmation process about his performance as Attorney General of New Hampshire. The gist of these concerns appears to be that Mr. Souter as Attorney General defended State policies with which those expressing the concerns did not agree.

If such expressions of concern were intended to be justifiable criticism, they were wide of the mark. All Attorneys General take an oath to uphold the Constitution of the United States and their respective States. What engenders constitutional litigation, of course, are differences of opinion as to the meaning of the Constitution to be upheld. Assuming that the State's policy is not frivolous, an Attorney General has a legal and moral obligation as its chief legal officer to advocate that position, whether established by its legislature by statute or its governor by executive order.

As is the case with any lawyer representing a client, an Attorney General may not on occasion agree with his client's, i.e., the State's, policy. His individual views are not relevant to his obligation to see that the State's position is fairly and effectively presented before the judicial tribunal where it is being challenged. Thus, in defending policies of the State of New Hampshire with which he or others disagreed, Mr. Souter far from breaching his commitment to uphold the Constitution was in fact discharging his constitutional obligation as Attorney General of that State. This is so even though in certain instances the judiciary ultimately decided that the questioned policies of New Hampshire failed to pass constitutional muster.

I respectfully submit that the fact that these State positions did not withstand judicial scrutiny has nothing to do with whether Mr. Souter withstands Senatorial scrutiny. As the confirmation record demonstrates, he has passed personal and professional muster with distinction. Those of us who have worked with him and had the pleasure of this acquaintance over the years are not surprised.

Sincerely yours,

ANDREW P. MILLER.

Mr. President, I will vote for this distinguished American and urge others to do so.

Mr. BIDEN. Mr. President, in the interest of time, but also in the interest of clarity and fairness, this is usually done after the vote takes place, but I would like to do it prior to the vote because these people very seldom get the recognition they deserve.

I would like to recognize for particular thanks staff people who played a key role in putting these hearings together. They devoted hundreds of hours and late nights to making the committee's consideration of Judge Souter's nomination orderly and fair: John Bauer, Jamie Daniel, John Dichtl, Ted Hosp, Kim Kachmann, Lisa Meyer, Ross Mansbach, Anne Rung, Henry Noyes, Phil Shipman, Pam Yonkin, Brooke Thomas, Justin Tillinghast, and Grace Lescelius.

And special thanks to two staff members who put in countless hours to make sure that the hearings went smoothly: Joel Feyerherm and Sally Shafroth, who has done so much for the committee for so long. They really went above and beyond the call of duty.

These attorneys and professionals on the Judiciary staff helped us study Judge Souter's record, assemble that record, and conduct a thoughtful analysis of it. Their intellectual skill and contribution was first rate: Scott Schell, Annette Anthony, Harriet Grant, and Andy Tartaglino.

Five professional staff people deserve particular credit for their contributions:

Paul Bland, our committee's chief nominations counsel, who supervised

our study and review of Judge Souter's record and writings. His performance on this nomination, as with the many others he has worked on, was superb.

David Strauss, a University of Chicago law professor who joined our staff to work on the Souter nomination, and did a fantastic job of working with constitutional scholars and conducting vital research into the complex constitutional questions at issue here.

Chris Schroeder, of Duke University Law School, who volunteered his time to help with briefings, and the preparation of materials for the hearings. As always, Chris' intellectual insights were of great value.

Jeff Peck, our committee's general counsel, who spearheaded my preparation for the hearings. Quite simply, there is no constitutional lawyer anywhere in this country who has thought as intelligently or deeply about the role of the Senate in confirming Supreme Court Justices.

And last, but not least, Diana Huffman, the committee's staff director, who supervised the committee's preparation for the hearings, and the conduct of those hearings. Her tireless and savvy work in putting together the hearings was essential in our success in balancing the committee's need to be thorough with its duty to be fair.

Now I see my colleague from California is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. I thank the distinguished chairman of the Judiciary Committee for his courtesy.

Mr. President, last Monday, September 24, I addressed the Senate at some length on the reasons why I will vote "no" on the nomination of David Souter to succeed Justice William Brennan as an Associate Justice of the U.S. Supreme Court. My view of my constitutional responsibilities to exercise advice and consent to a lifetime appointment to the highest court of the land compels me to vote no. I am not voting against Judge Souter because we disagree on the issue of abortion or on the Supreme Court's decision in Roe versus Wade, since I have no idea what his position is on abortion or Roe versus Wade.

I am voting no because I have no idea what his position is on the level of scrutiny to be applied in right-to-privacy cases. I am voting no because I have no idea what his position is on the constitutional right of individuals, married or unmarried, to use contraceptives. No Member of the Senate, to my knowledge, knows the answer to any of these questions because Judge Souter has declined to answer them. He did not decline to answer questions on other important constitutional issues ranging from the constitutionality of capital punishment to his views on cases involving the religious freedom provisions of the first amendment, but on constitutional issues involving the right to privacy of millions of American men and women, we know little.

Mr. President, Judge Souter told the Judiciary Committee that he did not know how he would rule on any prospective future specific case involving reconsideration of Roe versus Wade and would listen to the arguments made on both sides. That is a position which any judicial nominee is obligated to take. Indeed, any nominee who cannot make that commitment should be rejected out of hand. A commitment not to prejudge an issue prior to hearing the arguments is an essential element of justice. No member of the Judiciary Committee of the U.S. Senate asked Judge Souter to state how he would rule on any prospective case.

I am voting against Judge Souter's confirmation because he has asked us to take him on faith in this critical area of constitutional rights. That I cannot do. Many, many Senators have expressed similar concerns about Judge Souter's refusal to answer questions in this important area of constitutional law. Many who will vote for him have expressed the hope that they are making the right choice and that he will not cast a fifth vote on the Court which will dismantle the long line of cases recognizing and securing the right of Americans to privacy in matters relating to procreation, including the right to abortion.

I intend to do more than just hope for the best. Mr. President, to the millions of American women who fear that by its action today in confirming Judge Souter, as is about to happen, the U.S. Senate is placing their lives in jeopardy, I make this pledge to them: If the unhappy day comes when David Souter casts a fifth and deciding vote to overturn Roe versus Wade, I will take action to bring before the Senate the Freedom of Choice Act. The Freedom of Choice Act is legislation I have introduced which will make freedom of choice Act would have the effect of nullifying a Souter vote to overturn Roe versus Wade. This legislation provides simply that a State may not restrict the right of a woman to choose to terminate a pregnancy before fetal viability, or at any time, if necessary, to protect her life or her health.

Mr. President, Congress has the authority under section 5 of the 14th amendment to the Constitution to enact legislation to protect the liberty interests of Americans where the Supreme Court cannot find a specific right protected under the Constitution.

Many Members of the Senate from both sides of the aisle who are committed to protecting the rights of women to make these most fundamental decisions for themselves free of Government interference have already joined as cosponsors of this important legislation. I hope that other Members who share these concerns will join as cosponsors of this legislation and help us work to ensure that this country does not return to the dark days of back alley abortions and Government interference with private, personal decisions of Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, the Senate will today undertake its constitutional obligation to advise and consent on the nomination of Judge David Souter to be an Associate Justice of the Supreme Court.

Such votes are never easy to cast. Because each Justice has the ability to affect—indeed, to alter—the very fabric of our Nation, I believe that every Senator has a deep responsibility to evaluate thoroughly every nominee before deciding how to vote.

As you know, Mr. President, the Judiciary Committee held 5 days of hearings to examine Judge Souter on his qualifications and record. In addition, numerous distinguished witnesses representing themselves and/or their organizations testified for and against this nominee. In my view, each witness contributed to the mosaic that the Senate has created on the very private Judge Souter.

I must say that I share the frustration of those Senators and witnesses who wanted to learn more. While questions were asked and answers were given, many of us continue to feel uncertain about the real views of a man who could change the course of our history. In particular, I wanted to know more about his views in the areas of privacy—including a woman's right to choose an abortion, racial and gender discrimination, and religious freedom.

In the absence of certainty, Mr. President, I must rely on the two things that a Senator must always rely on: Judgment and experience. During my almost 30 years in the Senate, I have faced votes on more than a dozen different nominees to the Supreme Court. I have also seen those nominees, once on the Court, both please and disappoint the American people and the Senators who voted to confirm them. It is my fervent hope that Judge Souter, whom I believe will be confirmed by the Senate, will bring to the Court and to the Nation compassion, understanding, and wisdom.

In deciding how to vote, Mr. President, I have also looked back on my prior decisions. Over the years, I have voted both for and against various nominees to the Court. I have voted against nominees when it was clear to me that the national interest would be harmed, and I have voted for nomi-

nees—even those who do not share my views or philosophy—when I was confident that the nominee was professionally and personally qualified.

Mr. President, unlike some of my colleagues, I do not subscribe to the theory that Senators should not inquire into a nominee's personal views. Rather, I believe it is incumbent upon each Senator to ensure that the Supreme Court is composed of judges of compassion, intelligence, and integrity. If intensive questioning is the best way—or the only way—to make this determination, then it is fair and necessary that it be done.

Still, it is often difficult to tell, in advance of Senate confirmation, whether a nominee has the qualities that are necessary in a guardian of our constitutional rights and liberties. In this instance, I have concluded—from the Judiciary Committee hearings and a review of the record—that Judge Souter seems to be a person of integrity who has the professional and personal qualifications necessary to sit on the Nation's highest court.

In reaching this decision, I have been cognizant of—and troubled by—the concerns of individuals and organizations who share my views on issues of great consequence to our society. I have weighed carefully those concerns, and I appreciate the effort and commitment of many who have shared their concerns with me. In my view, however, Judge Souter—the nominee of a Republican President who was elected on the coattails of the most conservative President in recent history—is probably the best and most moderate nominee we can expect from this administration.

Mr. President, I think it is entirely possible that Judge Souter will serve this Nation well. I hope that the Judiciary Committee hearings, and the words and advice of concerned Senators and citizens, will help Judge Souter remember every day that he serves on the Court his own eloquent testimony: "if [judges] * * * are going to change * * * lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."

I wish Judge Souter well, and wish for the country that the Senate is vindicated in its decision to confirm this nominee.

Mr. SYMMS. Mr. President, I rise on this second day of the Supreme Court's 1990-91 term to announce my support for the nomination of U.S. Circuit Judge David H. Souter to be an Associate Justice of the U.S. Supreme Court. President Bush announced his nomination of Judge Souter just 10 weeks ago yesterday, and I am pleased the majority leader and Senator BIDEN, the chairman of the Judiciary Committee, have brought the nomination to the full Senate in time for Justice Souter to be seated for all but a few days of the Court's new term.

I have reviewed Judge Souter's record as a jurist in both the Federal and New Hampshire State courts and, prior to that, as the attorney general of New Hampshire. In addition, I was pleased to be able to watch a good deal of the Judiciary Committee's confirmation hearings.

Clearly, there are a few issues, such as abortion, on which Judge Souter does not have a well-established record of personal opinion or judicial decisions. And that fact probably serves him well in this confirmation process. On the other hand, there are many legal and constitutional issues where Judge Souter's writings from the bench or as attorney general have left a paper trail that was explored in depth during the Judiciary Committee's hearings and by which Senators can garner a pretty clear picture of the kind of jurist this man is likely to be.

As attorney general, Judge Souter was a staunch defender of the right of law-abiding citizens to be protected against society's criminal element. He demanded respect for State law and those who threatened public order were dealt with firmly and fairly. He was a no-nonsense chief prosecutor for the State, and the citizens of New Hampshire benefited greatly by the attention Attorney General Souter paid to the serious responsibilities of his office.

As a judge, he has written numerous decisions involving important constitutional issues such as freedom of association, due process rights, and protection against unwarranted search and seizure and self-incrimination, as well as legal issues relating to important questions of family, labor, and criminal law. What this record establishes clearly is that David Souter is a careful, precise, keenly intellectual jurist who believes in the court's limited constitutional role as the interpreter, rather than the creator, of law. He accepts and applies traditional standards of statutory and constitutional interpretation by referring to "the plan meaning of the language employed," and in constitutional cases, he applies "the clear rule that 'the language of the Constitution is to be understood in the sense in which it was used at the time of its adoption.'"

In a response to a question on the Judiciary Committee's questionnaire regarding his general approach to judging, Judge Souter said:

> The obligation of any judge is to decide the case before the court, and the nature of the issue presented will largely determine the appropriate scope of the principle on which its decision should rest. Where that principle is not provided and controlled by black letter authority or existing precedent, the decision must honor the distinction between personal and judicially cognizable values. The foundation of judicial responsibility in statutory interpretation is respect for the enacted text and for the legislative purpose that may explain a text that is unclear. The expansively phrased provisions of the Constitution must be read in light of its divisions of power among the branches of government and the constituents of the federal system.

Mr. President, in that statement and in terms far more eloquent that I could muster, Judge Souter has aptly described the approach to judging that I look for and highly approved in any nominee to serve on the Federal bench but particularly sc for nominees to the Supreme Court. On that basis, I feel confident that David H. Souter is eminently qualified and will be a very able Associate Justice of the Supreme Court. I hope he will be overwhelmingly confirmed.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, since we are about to conclude the debate on Justice Souter, I wish to take this opportunity to express my deep appreciation to several members of my staff who have done such a fine job preparing for the hearings, during the hearings, for floor consideration today. They are Terry Wooten, who is chief counsel and staff director on the Judiciary Committee; Melissa Riley, who does outstanding work in connection with the judges on the committee; Duke Short, who is now my chief of staff but formerly was in charge of nominations and continues to take a great interest in this work; and Melinda Koutsumpas, the minority chief clerk whose efforts were very beneficial. I thank them for their good work.

I also commend several members of Senator BIDEN's staff who have been cooperative and helpful during this process: Jeff Peck, Ron Klain, and Diana Huffman.

Senator BIDEN and I have a fine relationship. Our staffs have a good relationship, and it is very nice that we can all work together.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Delaware is recognized.

Mr. BIDEN. I believe the Senator from New Mexico has indicated that he would like to speak to this nomination.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I will vote for the nomination of Judge David Souter for a position on the Supreme Court. My vote is determined by two considerations:

First of all, the information which has come out during the hearings on Mr. Souter's nomination in my view has been favorable to him. Based on his intellectual capacity, education, and his reputation for integrity, he

seems eminently qualified to serve on the Supreme Court.

Second, I firmly believe that the Senate's responsibility is to give its consent to a President's nominee unless there is a basis in the record of the nominee that renders him unfit for the position to which he is nominated.

Many are apprehensive about Judge Souter's views on the right to privacy and, more particularly, about his views on the right of a woman to choose to have an abortion. I share those concerns and I hope that he will have the wisdom to leave established law in place on that extremely sensitive issue.

I believe my duty under the circumstances is to give him the opportunity to exercise his judgment. I fervently hope, as do many of my colleagues, that judgment proves to be good.

I thank the Chair. I yield the floor.

Mr. BIDEN. Mr. President, there is an additional colleague who wishes to speak, and I am told that he is on his way to the Chamber. I believe that will be the last person to speak until we have the closing statements by the distinguished Senator from New Hampshire [Mr. RUDMAN] and the majority leader.

So while we are waiting for the Senator to arrive, I suggest the absence of a quorum.

Mr. THURMOND. Mr. President, if the distinguished Senator will withhold, I would like to take this opportunity to commend Senator RUDMAN for being so active in behalf of Justice Souter. I do not think I have known any Senator in my 36 years here who has taken more interest in a nomination than has Senator RUDMAN. They have been friends for many years. They know each other well. His opinion, I am sure, has had a great influence on many other Senators.

I just want to pay him that tribute and tell him he has done a fine job in connection with this nomination.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Thank you, Mr. President. I will not be long, because I know that my colleagues wish to get on with this matter.

Mr. President, as I said earlier in the Senate Judiciary Committee, I will consent to the nomination of David Souter to be the next Justice of the United States Supreme Court. In debating this nomination and Judge Souter's qualifications, the U.S. Senate carries out one of its most profound responsibilities.

The President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint * * * Judges of the Supreme Court."

Those 20 words are in article II of the Constitution, and they lay out the guidance for the President and the Senate as we come together to select members of the Judiciary. In confirming judges, we should neither rubberstamp the President's choice nor make the process partisan.

I think the Judiciary Committee has fulfilled its responsibility with care and deliberation. Chairman BIDEN deserves a great deal of credit for this. Senator THURMOND, too, deserves credit. Others have done a tremendous job as well. Senator RUDMAN went to every one of his colleagues, both Democrat and Republican, who had any question whatsoever about this nomination. He very frankly and honestly filled us in.

Whenever the Senate completes its work of advice and consent, I always ask myself whether we have served the Constitution and the American people in confirming or rejecting a nominee. In this case, we probed deeply into Judge Souter's professional and intellectual qualifications. But we always do.

I will put into the RECORD some of my findings of his qualifications.

I just want to take a moment to talk about "Advice and Consent" because some people lose sight of exactly what that means. There was some grumbling even in the Judiciary Committee that the Senators asked too many questions. I thought the questions were tough and probing, and fair and thorough, as they should be. Some used the time to talk about past confirmations, but most Senators asked significant, difficult, probing, and exhaustive questions.

Advice and consent in the Constitution demand thorough questions. It does not demand excuses for asking them. We demean ourselves and we demean the Constitution if any of us apologizes for asking thorough questions.

The more answers we get, the more the American people know about an individual, especially an individual who will make important decisions about our lives and our country; and the better the Constitution is served. The Court and the Constitution were well served by the Senate hearings on Judge Souter. This body, the U.S. Senate, was also well served and I believe, through it, the American people.

We understand that the framers of the Constitution and the Bill of Rights did not entrust certain fundamental liberties entirely to the good intentions of the executive and legislative branches. For that reason, we have an independent judiciary. And we Senators are the ones who have to make sure that we preserve that.

So let us never make excuses for upholding the Constitution through advice and consent. After all, we take an oath of office to do just that. It is an obligation none of us should ever forget. We want members of the Judiciary Committee to take that to heart in probing the nominee's views on constitutional law. We asked whether Judge Souter will respect the fundamental rights and liberties that Americans have fought for two centuries to preserve.

Over the last 2 months since Justice Brennan resigned, we have reviewed every aspect of Judge Souter's judicial and legal career. We have questioned him about his tenure in the Attorney General's office, his years in the New Hampshire State courts, and his current views on a wide range of legal and social issues. The committee concluded, in a strong bipartisan vote reflecting the thoroughness and quality of the hearings, that Judge Souter should be confirmed.

I will not go back through all of this. I will put that in the RECORD.

I have said before I do not believe that Judge Souter has answered all my questions, to the extent that I wish he had. But he has demonstrated a belief in the Constitution and a willingness to approach issues fairly. He is not, in my mind, an ideologue.

If we offer our consent to President Bush's nominee, as I believe we will, he will be entrusted with the awesome responsibility that Justice Brennan fulfilled so well, so nobly, and so magnificently.

As the honorable man that I believe he is, Judge Souter is not going to forget the valuable lesson he learned as a trial judge, that the decisions he will make will have an impact for the rest of the life on an individual and sometimes on many individuals.

So through us the American people express their faith in Judge Souter's ability to preserve the essence of the American tradition. My vote today represents my faith that he is a nominee worthy of that trust.

The Senate must take great care in asking questions during confirmation hearings because the individual who ascends to the Supreme Court this term will help to mold the course of American jurisprudence well into the next century. As we look ahead we will lose much of that little message on the American penny—E Pluribus Unum, bringing from the many, one; bringing from diversity, a unity of purpose and spirit—if we do not preserve the quality, dignity, and independence of the Supreme Court.

Time after time, throughout our history, when other branches of Government were either unwilling or unable to protect fundamental rights, Americans have turned to the courts and, ultimately, to the Supreme Court. It would be a foolish dereliction of our duty to give any nominee this power without understanding—as fully as we can—where the nominee thinks the Court should go. Our advice and consent structure epitomizes the framers' genius for the separation of powers,

which guarantees the protection of the freedoms in our Constitution.

To maintain this historical role for the Court, it is up to both the White House and this body, walking separate but parallel paths, to chart the future course of judicial selection. Presidents consistently should pick nominees from the very large list of able, experienced, tested, and well-known men and women whose lives make them natural choices as protectors and expositors of the Constitution. The ultimate critics or our advice and consent task are the American people, and their oversight is utterly impossible if this Senate performs nothing more than polite or perfunctory review.

What are the factors the Senate must consider during the advice and consent process?

The threshold qualifications are competence, honesty, and integrity. Judge Souter's record, combined with his performance in 2½ days of testimony, convinces me that he is intelligent, learned, forthright, and honorable. But those attributes are no more than prerequisites for the job, and mark only the beginning of our deliberations.

We must also ask whether Judge Souter will respect the fundamental rights and liberties that Americans have fought for two centuries to preserve.

Does Judge Souter accept the first amendment as protecting our right to speak and worship as we believe, to articulate our grievances and express them to our Government, and to benefit from a free press?

Does Judge Souter respect the freedom from government interference in our private lives that Americans have come to expect and enjoy?

Does Judge Souter commit himself to ensuring that the rights and opportunities that uniquely characterize our society will be equally available to all, regardless of race or gender?

After listening to Judge Souter at the confirmation hearings, examining his writings and speaking privately with him twice, I decided to support his nomination.

Mr. President, that decision was a difficult one. Judge Souter did not give the committee all of the answers—either in content or breadth—to which I believe the Senate is entitled.

I questioned Judge Souter extensively about his views on the establishment clause of the first amendment and remain troubled that he would not commit himself to Jefferson's idea of a "wall of separation" between church and state. I trust that if Judge Souter is confirmed and called upon to consider the establishment clause, he will keep in mind our discussion of the poignant experiences of his friends WARREN RUDMAN and Tom Rath or the similar experience that my friend from Vermont, Jerry Diamond, described in his appearance before the committee.

I trust Judge Souter will understand that government has no business flying flags at half-mast on Good Friday, and will recognize that the moral and religious beliefs of Americans, even small minorities, must not be disparaged by the state as "mere whimsy." The first amendment has made this Nation tolerant, united, and strong. I do not believe that Judge Souter will view this legacy lightly.

I remain troubled by Judge Souter's reticence in answering questions on the scope of fundamental privacy rights. In response to my question about whether Roe versus Wade is settled law, Judge Souter declined to respond, saying he drew "a fine line" at Griswold versus Connecticut.

That line was the wrong line. Although we do not expect a judicial nominee to comment on a specific case before the court, the public we represent should know how the nominee regards fundamental rights.

While he refused to comment on Roe versus Wade, Judge Souter assured us that he would not approach challenges to this important case with any agenda or preconceived ideas about the results. The majority of Americans expect that David Souter will share their view that decisions about reproduction are best left to the individual. This is one realm of life where the State has little interest or right to interfere.

Judge Souter spoke movingly about an incident in which he counseled a young woman who was contemplating a self-induced abortion. I hope Judge Souter learned that day that while abortion decisions are traumatic under any circumstances, abortions in the pre-Roe era were dangerous, beyond the means of most women, and often life-threatening. American women cannot be plunged into the dark ages ever again.

I wish there would never be the need for another abortion, but that is a decision for a woman, not for a legislature or a court. During the hearing, I reminded Judge Souter of my own experience with illegal, pre-Roe abortion. As a prosecutor in Vermont, I received a call from the police. It was 3 o'clock in the morning and a woman in the emergency room of the local hospital had nearly died from a botched abortion.

I prosecuted the man who arranged for this and other women to travel from Burlington, VT to Montreal for abortions performed by a nurse who learned her trade from the SS at Auschwitz. This nurse nearly killed a young woman, who ended up sterile. And this woman was not the only victim. Several other women, after having abortions performed illegally, were blackmailed for money or sex by the man who arranged the dangerous procedure. Quite a racket.

Abortion is not an easy question, but none of us wants women to endure this pain and exploitation again. Let us be realistic, if abortion is outlawed again, women will retreat to back alleys and back rooms where they will be vulnerable to the kind of piranha I prosecuted in Vermont. Judge Souter and I discussed this incident during the hearing. I hope he will not lose sight of its message.

I also believe that Judge Souter will not approach constitutional questions as a strict constructionist. Judge Souter recognizes that the equal protection clause was properly applied in the landmark case of Brown versus Board of Education, that the Constitution protects unenumerated rights, and that changing social attitudes and traditions must be considered in identifying such rights.

Another area that disturbed me was Judge Souter's role as New Hampshire attorney general when 1,414 protesters were arrested at the site of the Seabrook nuclear powerplant in 1977. I questioned Judge Souter about the State's establishment of a private fund to help finance its costs. I was alarmed that the utility donated $74,000 to the fund, while the prosecutions were pending. This arrangement evoked images of "rent-a-prosecutor."

Attorney General Souter—as the chief law enforcement officer in charge of the prosecutions—should have prevented an interested party from influence the judicial process. I welcomed Judge Souter's remarks that he now understands he should have opposed the fund.

Nonetheless, Mr. President, Judge Souter demonstrates that he approaches issues fairly and reveres the Constitution. Once confirmed, Judge Souter will take the seat of Justice William Brennan. Justice Brennan is a remarkable jurist, who will long be remembered for his fierce, unyielding support of individual rights—even in the face of popular prejudice and scorn.

At critical moments in history we have depended on the Supreme Court—and justices like William Brennan—to be our unifier, to being together a divided society, to bridge deep gulfs in understanding, to help explicate complex problems thrust on us by modern times. As Judge Souter acknowledged during his confirmation hearing, "Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and will ever have."

As a Supreme Court Justice, David Souter will serve as the guardian of the liberty and cherished freedoms of all Americans.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the Chair.

Mr. President, first let me say in all sincerity, that I have no words to express my thanks to the chairman of the Judiciary Committee, Senator BIDEN of Delaware, and the ranking member, Senator THURMOND of South Carolina, for their unfailing courtesy through a rather interesting, and I would say, difficult period for my friend, David Hacket Souter.

The conduct of the hearings was scrupulously fair and thorough. I think in many ways, they set a standard on both sides of the dias, for what hearings should be.

I also want to pay a particular note of thanks to two people who also went the extra mile to make it possible for David Souter to get to those hearings, feeling that all of the logistics of the details had been prepared. They are Diana Huffman of Senator BIDEN'S staff, and Duke Short of Senator THURMOND'S staff. To all others, I give my personal thanks.

To my colleagues, I would say it is a unique situation in which a nominee to the U.S. Supreme Court happens to be one of the dearest and closet friends of a Member of the U.S. Senate. That is a unique situation. To all of my colleagues who came to me to ask questions about the nominee, I tell you now as I told you then, I have tried to be frank and candid and direct, as we expect of each other.

Mr. President, I can only think back to a day 20 years ago when I met a young man as an assistant in my office, when I became attorney general of our State. I recognized how extraordinary he was soon after I met him. And the most extraordinary thing for me standing here today is that in 1973 I had a conversation with him, which I remember very distinctly. After he had done an extraordinary piece of work, I remember saying to him, "I do not know what you your future will be, I do not know what path you have charted for your life, but it seems to me that you ought to have an interest in being on the bench. Hopefully the State bench and maybe someday the Federal bench."

I remember saying very clearly: "And when you get there, as I expect you will, I hope you will aspire to the highest possible place that you can be," never thinking, Mr. President, that I would be given the privilege by the Republican leader, which I appreciate, of giving the closing remarks in behalf of my very dear friend on this very special October day.

Mr. President, David Souter is my friend. I have trusted him, I have respected him, and I like him. He has made all of us, who know him, think, and to laugh, and to reflect. When I became attorney general of New Hampshire, our office was small. He helped me build it to one of the top law firms in the State. He succeeded me and excelled what I did.

He did so by recruiting a staff of extraordinarily talented young men and women, some of them who the committee heard from, who are hired on the basis of talent, not politics or ideology. He had a staff that was the envy of the law firms of the region. Those lawyers today are judges, public servants, and partners in major law firms in New Hampshire and across the country.

David Souter served with great distinction as a judge. Everyone who practiced before him lauded his fairness and his wisdom.

Moveover, I believe that his days as a judge on the trial court impressed upon him some very interesting lessons. One of those, I think struck all members of the committee, when he said it. I will quote it from those hearings. He said:

> When those days on the trial court were over, there were two experiences that I took away with me and the lessons remain with me today. The first lesson, simple as it is, is that whatever court we are in, whatever we are doing, whether we are on a trial court or in an appellate court, at the end of our task some human being is going to be affected. Some human life is going to be changed in some way by what we do.
>
> The second lesson that I learned is that if we are going to be judges, whose rulings will affect the iife of other people, we had better use every power of our minds and our hearts and our beings to get those ruiings right.

During the hearings, the Senator from Wisconsin [Mr. KOHL] asked David Souter why he wanted to sit on the Supreme Court. After noting with absolute candor that he did not seek the position, David Souter said:

> I want to try the best I can to exercise that responsibility to give the Constitution a good life in the time that it's entrusted to me, to preserve that life and to preserve it for the generations that will be sitting in this room long after you and I are gone.

That struck me as one of the most eloquent statements I have ever heard in my days of public service. His devotion to the Nation and its constitutional principles were made clear when he said this, in answer to a question:

> I would not be true to my own sense of constitutional principle if I did not say that the Senate ought to be looking for someone who, in going through the very difficult process sometimes of seeking constitutional meaning, would seek for something outside that judge's personal views for that moment, who would seek to infuse into the Constitution a sense of enduring value, not of ephemeral value, and who would try to rest the process on as objective an inquiry as can be possible for these massive and magnificent generalities that are committed to us.

Mr. President, that is the kind of a Justice of the U.S. Supreme Court that this Nation sorely needs.

As those of us from New Hampshire have known for many years, and millions of Americans came to realize when he testified before the Judiciary Committee, this is the kind of Supreme Court Justice we will get in David Souter. His life has been rooted in our rocky soil and nurtured by a lifelong commitment to public service. David Souter is a good person—one who will bring honor to the Supreme Court and to our constitutional system.

So, Mr. President, it is with unbounded enthusiasm and with conviction that I consider it a special privilege today to urge my colleagues to join me in voting for this magnificent man from New Hampshire.

I thank the Chair.

Mr. BIDEN. Mr. President, while we are waiting for the majority leader, let me just say that David Souter is indeed fortunate to have such a friend.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I begin by commending the distinguished chairman of the Judiciary Committee, Senator BIDEN of Delaware, for the fair and thorough manner with which this nomination was considered. And, also, the members of his staff, most especially Ron Klain, who did an outstanding job in organizing the hearings and organizing the prompt action by the Senate.

I also commend my thanks to the distinguished ranking member of the Judiciary Committee, Senator THURMOND, and of course to Senator RUDMAN, whose support for, sponsorship of, and diligent effort on behalf of the nominee, has in my view been a major factor in the reception received by the nominee in the Senate.

I will say in all candor that the fact that Judge Souter has a long history of association with Senator RUDMAN and is strongly endorsed by Senator RUDMAN was an important factor in my own consideration of this matter, and I know the same to be true of all of the Members of the Senate who so respect our distinguished colleague from New Hampshire.

Mr. President, I will vote to confirm the nomination of Judge David Souter to the Supreme Court of the United States.

I do so not because I feel confident that I can predict his future course on the Court. Rather, because I believe that in outlining the broader framework within which he views constitutional protections and the responsibil-

ity of the judiciary to adjudicate cases, Judge Souter reflected a reasoned approach and a sound understanding of the Constitution.

In a discussion with the committee chairman about the development of the Bill of Rights, Judge Souter made the following observation:

> * * * the starting point for anyone who reads the Constitution seriously is that there is a concept of limited governmental power which is not simply to be identified with the enumeration of those specific rights or specifically defined rights that were later embodied in the bill [of Rights].
>
> If there were any further evidence needed for this, of course, we can start with the Ninth Amendment. * * *
>
> * * * it was * * * an acknowledgment that the enumeration [or rights in the Bill of Rights] was not intended to be in some sense exhaustive and in derogation of other rights retained.

I agree with that statement and the approach to the Constitution that it reflects. Our Constitution was not written to prescribe specific remedies for particular problems. It was, rather, intended to prevent a concentration of power by any group or individual so as to preserve the liberties of the people.

In his testimony, Judge Souter acknowledged the responsibility of the Court in fulfilling that purpose. He said, "* * * courts must accept their own responsibility for making a just society." Judge Souter repeatedly acknowledged that the rights of Americans are not exhausted by the specific rights listed in the text of the Bill of Rights, but that they also include rights implicit in the text of the Constitution.

He made it clear that what is implicit in the text of the Constitution is not limited to the particular factors present at the time of writing, but includes broader principles.

His interpretation, as he put it, is not that original intent is determinative, but original meaning.

He said, for example, "If you were to confine the equal protection clause only to those subjects which its framers and adopters intended it to apply to, it could not have been applied to school desegregation," because those who wrote and adopted the 14th amendment lived at a time when segregated schools were the standard.

He went on to say, "What we are looking for, when we look for original meaning, is the principle that was intended to be applied * * *."

The distinction Judge Souter drew between original intent and original meaning is a useful distinction. It permits the underlying principles to be applied to new needs without limiting the broad rights of our people today to the political or social circumstances of the 18th or 19th centuries.

Judge Souter's understanding, in particular, of the significance and reach of the 14th amendment in the constitutional system reflects an understanding of our Nation's history and of the central role that the tragic fact of racial prejudice has played in our history.

Judge Souter said no social problem is "* * * more tragic or demanding of the efforts of every American in the Congress and out of the Congress than the removal of societal discrimination in matters of race * * *." He also said, in response to a question about judicial activism, "The obvious and significant fact of history * * * is the adoption of the 14th amendment."

As we all know, Judge Souter declined to address specifically the question of abortion and the Court's past rulings on that matter. He acknowledged a core right of privacy but would not be drawn into discussion of how broad or how enforceable against government such a right would be.

For that reason, those who are particularly concerned that the Supreme Court may in the near future dramatically tighten or even reverse the right of a woman to choose to terminate a pregnancy have suggested that Judge Souter's nomination ought to be rejected.

I respect the view that this factor is so central that no other factor should be considered. But, on reflection, I do not share that view.

The hearings focused to a substantial degree on the subject of privacy.

That is understandable at a time when developments in medicine and technology are altering our ability to intervene medically to save and prolong life and to intrude technologically into the most private recesses of individual thought and behavior.

There is little doubt that future cases before the Supreme Court will develop the legal boundaries of privacy, individual autonomy, conscience, and related concepts.

Advances in genetics have already raised questions about the legal ownership rights an individual may have to his or her physical body. Advances in voice transmission have raised questions about the expectation of a privacy in conversations conducted over certain telephone equipment. Medical advances have raised the exceedingly difficult issue of the State's relationship to an individual's death from natural causes.

But while this new and expanding area of law will continue to play a central role in the development of constitutional doctrine and the protection of individual rights, we must remind ourselves that the Supreme Court is not the sole source of legal development in the American system.

The Congress and the executive branch also have their responsibilities in meeting the new challenges that face our society.

I said at the outset that I do not have a feeling that I can predict how Judge Souter would vote on cases that may come before him on the Supreme Court.

I have, therefore, rested my decision on his nomination on the approach that he uses to determine the source of individual liberties, the breadth with which he sees constitutional guarantees, the emphasis he places on the structure of the constitutional system and its purpose, and the criteria he would use to determine if an individual liberty is enforceable against the government.

These factors do not give me an infallible guide as to his future rulings. But they do not give such a guide to anyone else either.

Those who argue that Judge Souter should be opposed because they are certain they know how he will vote have no objective basis for that certainty.

But there is one certainty over which there can be no dispute: No matter what the pressing controversy of the moment is, Judge Souter or any other nominee will occupy a seat on the Supreme Court for many years after the hot controversies of today are settled law.

I believe that if Judge Souter brings to those future controversies the breadth of experience, understanding, and the careful judgment which his testimony before the Judiciary Committee reflected, then his decisions in those cases will continue to reflect the fundamental American constitutional tradition.

For those reasons, I shall vote to confirm his nomination.

Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David H. Souter, of New Hampshire, to be an Associate Justice of the Supreme Court of the United States? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 259 Ex.]

YEAS—90

Armstrong	Boschwitz	Coats
Baucus	Breaux	Cochran
Bentsen	Bryan	Cohen
Biden	Bumpers	Conrad
Bingaman	Burns	D'Amato
Bond	Byrd	Danforth
Boren	Chafee	Daschle

DeConcini	Humphrey	Packwood
Dixon	Inouye	Pell
Dodd	Jeffords	Pressler
Dole	Johnston	Pryor
Domenici	Kassebaum	Reid
Durenberger	Kasten	Riegle
Exon	Kerrey	Robb
Ford	Kohl	Rockefeller
Fowler	Leahy	Roth
Garn	Levin	Rudman
Glenn	Lieberman	Sanford
Gore	Lott	Sarbanes
Gorton	Lugar	Sasser
Graham	Mack	Shelby
Gramm	McCain	Simon
Grassley	McClure	Simpson
Harkin	McConnell	Specter
Hatch	Metzenbaum	Stevens
Hatfield	Mitchell	Symms
Heflin	Moynihan	Thurmond
Heinz	Murkowski	Wallop
Helms	Nickles	Warner
Hollings	Nunn	Wirth

NAYS—9

Adams	Burdick	Kerry
Akaka	Cranston	Lautenberg
Bradley	Kennedy	Mikulski

NOT VOTING—1

Wilson

So the nomination was confirmed.

Mr. THURMOND. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Disturbance in the Visitors' Galleries.)

Mr. BYRD. Mr. President, may we have order in the Galleries?

The PRESIDING OFFICER. The Galleries will refrain from any noise. Order will be restored.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. 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. FORD. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has confirmed the nomination of Judge David Souter.

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

LEGISLATIVE SESSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE INTERNATIONAL FUND FOR IRELAND

Mr. KENNEDY. Mr. President, the International Fund for Ireland has now been in operation for 4 years. In that time, it has grown from a hopeful idea in the Anglo-Irish Agreement on Northern Ireland in 1985, through a troubled initial phase, to what it has become today, a worthwhile participant in the search for a peaceful settlement of the violence and divisions that have plagued the people of Northern Ireland for over 20 years.

The United States has a substantial interest in promoting this search for peace. After a difficult start, the Fund has turned out to be an effective means for us to help achieve the goal that all of us share for the future of Northern Ireland. Annual appropriations from the United States have played a major role in the Fund's success. An appropriation of $20 million for fiscal year 1991 has strong support in Congress, and I hope that it will be enacted.

From the beginning, the mandate of the Fund was clear—to encourage economic development in the areas most affected by the violence in Northern Ireland. In article 10 of the Anglo-Irish Agreement, the Governments of Ireland and Great Britain pledged to

> Cooperate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequence of the instability of recent years, and shall consider the possibility of securing international support for this work.

The International Fund for Ireland was subsequently created to carry out this purpose. In the initial phase of its operations, the Fund established seven key programs:

First, two investment companies operating according to strict commercial criteria;

Second, a business enterprise program to stimulate job creation;

Third, an urban development program to revitalize town centers, including 24 towns in Northern Ireland, and 12 in the South;

Fourth, a tourism program to develop one of the region's principal industries;

Fifth, an agriculture and fisheries program to stimulate new enterprises;

Sixth, a science and technology program to emphasize practical research likely to lead to early economic benefits;

Seventh, a wider horizons program to encourage new skills through practical work experience, training, and education overseas.

At the outset, however, the Fund had difficulty in developing and implementing its mission. Projects were funded that were difficult to justify on the basis of the priority intended to be given to areas most affected by the violence. These areas include over a third of the population of Northern Ireland, and are concentrated in West and North Belfast, Derry, and along the border with Ireland. As a result of its missteps, the Fund was legitimately and increasingly criticized, and there were growing doubts in Congress about the desirability of U.S. support.

To its credit, the Fund responded to these concerns. A new series of initiatives was developed with special emphasis on disadvantaged areas, and the Fund has received high marks in the past year for its work in implementing these initiatives.

At a meeting of the Anglo-Irish Intergovernmental Conference on September 14, the conferees noted with particular satisfaction the growing evidence of the Fund's success in promoting economic regeneration to the direct benefit of the entire community, particularly in the most disadvantaged areas.

There is tangible evidence of this success. In all, 1,300 projects have been supported by the Fund; 8,000 jobs have been created; and substantial assistance has been made available to disadvantaged areas, with special emphasis on economic development projects in North Belfast, West Belfast, and Derry.

For the vast majority of the people on both sides of the conflict in Northern Ireland, the Fund has become a symbol of hope for a better future. It is helping to reduce the violence, mistrust, and discrimination that have plagued Northern Ireland for too long. In my view, the Fund deserves credit for resolving its early difficulties. It is coming into its own today, and it deserves continued support from the United States.

Mr. President, a four-part series of articles by Niall Kiely in the Irish Times last August provides an excellent analysis of the Fund. I believe that the articles will be of interest to all of us in Congress, and I ask unanimous consent that they may be printed in the RECORD, along with a subsequent editorial in the Irish Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Irish Times, Aug. 20, 1990]

FUND'S U.S. BACKERS DISAPPOINTED BY DUBLIN

(By Niall Kiely)

Beset by radical critics drawn from the ranks of Sinn Fein supporters in the United States, the International Fund for Ireland could have done without this year's unpublicised differences between the Irish Government and its most important supporters, the Friends of Ireland (FoI) group in the American Congress and Senate.

It was doubly unfortunate that it was the Government's absorption in Ireland's six-month EC presidency that proved instrumental in ruffling feathers on Capitol Hill. As 1992 nears, and the Euro-USA trade disagreements take on more rancorous forms, American aid to Community member-states has become increasingly vulnerable.

Although the Minister for Foreign Affairs, Mr. Collins, finally stepped into the breach in June with a warm speech of thanks to the board of the IFI, some of the fund's staunchest backers in Washington regarded the Minister's effort as rather little, and delivered pretty late in the day. The pressure of local criticisms, however unjustified most of them probably were, had taken its toll of FoI enthusiasm and the image of the fund had been belittled and smeared.

The critics were both forthright and cunning. The campaign was co-ordinated by prominent figures in Noraid, the Irish American Unity Conference and the Ancient Order of Hibernians. Their tactics were standard practice in modern American politics: identify vulnerability, distort some facts if necessary and paint the critical slogans with broad, populist strokes. As tactics go, it can be difficult to counter such have-you-stopped beating your wife attacks, and in the event, the response of the IFI and its official backers proved dilatory and hapless.

In effect, the fund's supporters in Dublin and London were up against the bare-knuckle gougers against whom they fielded nobody with the street-smart nous or official authority to slug back appropriately. British diplomats in Washington have always had difficulties dealing with contentious issues involving the Irish-American community, not least because their accents and perceived cultural values grate on the sensibilities of Americans with green-and-white views on the North. This factor in practical terms left defence of the IFI and its American funding largely to the Irish embassy.

The staff in Washington, particularly the political counsellor, Brendan Scannell, who laboured mightily on the Hill to counteract the efforts of the anti-fund lobbyists, did their best—and to notable eventual effect. Whatever distress signals they sent back to Dublin, however, made little impact on a Government engrossed in its half-year task of Community presidency. The summits, the shuttling and the time-consuming pomp and protocol took apparent precedence over what may have seemed a storm in a Washington teacup.

"The emphasis was all 'Europe,' Europe at the time and whatever it was the embassy did, it didn't get the big guys in Dublin off their asses," says one seasoned observer of Irish-American politics. "It left a clear feeling (in Washington) that the Irish Government hadn't done enough to counteract the charges against the fund and back up its friends. There was also a sense in the States that the Government was taking the Irish-American lobby's support for granted."

Nor could the fund and its operators in Dublin and Belfast escape all the flak. Their intent was admirable when they tried briskly from the start to get money out on the ground and produce results; and it made practical sense to avoid creating an expensive administrative tail, instead piggybacking on existing official networks, North and South. One result, perhaps inevitable, of all this hustle and hurry was that the mesh of IFI's check-and-balance net was never particularly fine.

And there may have been an element of innocence by well-meaning public servants who believe that because they were basically doing good works, such small mistakes as cropped up would be understood, corrected and forgiven: but that was naivety indeed by people who underestimated the determination of the critics who waited in ambush.

It was not just that some specific projects were funded which offered near-perfect material for the critics to exploit, such as the facelift for an AIB frontage in Strabane, or that ventures were assisted which invited apparently reasonable censure on the grounds that they were frivolous, "unsuitable" or already had recourse to private/public cash; it also transpired that the fund's defenders failed to justify with sufficient vim and rigour its *raison d'etre* and operating principles.

"Frankly, the (IFI) secretariat seemed to be clueless when it came to reacting to the criticisms of the fund's work," one well-connected Washington source told *The Irish Times* "You wouldn't have to be paranoid about Noraid to see them coming a mile off. Their connections are public and they certainly would like to destroy the Anglo-Irish Agreement, but the secretariat not alone let them make all the running—they floundered around the place when it came to hitting back."

It was not appreciated in Dublin or London how relatively insignificant an issue the IFI was, even for the committed FoI men, considered in the context of a year in their political lives, the source added. "These guys in the House (of Representatives) and Senate reckoned they'd done their bit by getting the money. Then they found themselves being sniped at—and by other Irishmen!," he explained, "Their attitude was: if the Israelis got another 20 million bucks, you wouldn't get some of them bitching later about how a few thousand was misspent here and there."

[From the Irish Times, Aug. 21, 1990]

TAKING ISSUE WITH THE "WELL-HEELED" AIR OF FUND PROJECTS

It's a long way from Ballymurphy to Stormont. As the crow flies, probably only a handful of miles, but the contrasts are not just the blatant ones. The gulf separating the Rev. Des Wilson and Irvine Devitt has much more to do with background, personal philosophy and Northern nuance.

Devitt is one of the joint directors general of the International Fund for Ireland (IFI). His room in the monolithic former parliament building in east Belfast is beside what used to be the Northern Ireland prime minister's office in pre-1972 days. In Dublin, his counterpart is Donal Hamill of Foreign Affairs who operates from an office in Iveagh House: St. Stephen's Green, Wilson might reasonably argue, is also some distance from Ballymurphy.

The sincerity of all three men could not be doubted, yet they hold diametrically opposed views on the fund and its application. A serious link between their positions is provided in the bulky shape of John McGuckian, who was appointed last autumn to a three-year term as IFI chairman. A successful businessman in his late 40s, McGuckian was once taught by Father Wilson and still admires him.

Sitting in the homely but down-at-heel Springhill community house, set in a west Belfast housing estate where jobless figures are so high as to be almost meaningless as statistics, it is easy to understand how the 55-year-old priest finds much of the IFI's funding priorities anathema. He considers tourism, for instance, to be ar already well-heeled and oversubscribed industry "that produces the lousiest jobs and the most anti-social hours;" he is bitter after a lifetime watching funds either misspent or not spent at all in Catholic working-class areas. And he is angry at the fund's refusal to fund a proposed project in the local Conway Mill.

Devitt, whose background was in the textile industry and with the NI Development Board (NIDB) before joining the department of commerce, has a simple explanation: although the IFI's day-to-day operations are independent and impartial, the British and Irish Governments do have an ultimate veto on any project considered unsuitable, and London exercised that veto on the mill. (A House of Commons answer last December stated that the mill had been refused public funds ". . . because of the nature and extent of paramilitary influence within the Mill.")

The "leverage concept" finds its way into much of Irvine Devitt's defence of the fund and its operations. He understands how the Americans in particular appreciate the concept of using public funds to lever further investment from private enterprise and local communities. In the North, the IFI has used its cash to encourage back-up financing from the Local Enterprise Development Unit (LEDU), the local councils, the Departments of Environment (DoE) and agriculture and community groups.

He describes as rubbish the claims of fund critics that most of the IFI spending in the North is east of the Bann, and that funding has favoured the Protestant community disproportionately. "There's no secret about the projects. Thirty-five per cent of the population lives in disadvantaged areas, and about 70 per cent of our spending has gone into those areas," he says. "And I'd reckon myself that the population is 80 to 90 per cent Catholic in the locations involved".

The emphasis has been on promoting an "enterprise culture" in which people who wish to start up or diversify in business can get assistance varying from workspace to training, expert advice to cash. Established and new enterprise centres have taken much of the IFI's Northern spending, with each disadvantaged area receiving £50,000 over two years to pay for a development officer whose role is to help local communities identify and develop suitable projects.

McGuckian believes that the American politicians who were instrumental in securing the initial US funding for the IFI understood perfectly well why the administrators had to concentrate during the first year or so on private enterprise companies and individuals: it was essential to get the money working quickly, and it took time to establish mechanisms through which suitable and realistic community schemes could be found and encouraged. "One of the problems was and still is to get good, viable projects in the disadvantaged areas where they were and are most needed," he says. "But as we got programmes underway and learned more ourselves, we got the development consultants out on the ground to research and recommend the right types of projects."

Devitt stoutly defends tourism projects as justifiable schemes for IFI assistance. "Sure, these schemes are easy targets," he agrees, "but economic regeneration is the name of the game. Take our assistance towards the building of the Plaza "budget" Hotel in central Belfast. The 10 per cent of costs we provided at a crucial stage nudged that project towards reality. Now consider

what that hotel will mean: there will be great employment during construction, it will probably be staffed by people from west Belfast, it will bring visitors to Belfast—and it will bring confidence to the city."

He believes the IFI's work has already begun to have practical effect. "I think the impact is now visible on the economic and social landscape of the North of Ireland. If you look honestly at Derry and Belfast, you'll surely agree that there are signs of confidence in both cities. Because of that, and with the help of our projects, I feel other towns will follow suit."

Last year, five of the IFI's six directors were replaced to coincide with McGuckian's arrival. The likes of Mr. Neil McCann, the Dublin fruit importer; Mr. Paddy Duffy, the Co Tyrone solicitor, Belfast merchant banker, Mr. John Craig; Mr. Pat Kenny, of accountants Deloitte Haughey Boland; retired Stormont civil servant Mr. Denis Calvert, and Fruit of the Loom MD, Mr. Willie McCarter from Buncrana, give of their time unstintingly to the fund.

None does so with more alacrity than McGuckian who also manages clothing and property interests, a farm and is a director of AIB and several other companies including some in the U.S. He is also pro chancellor of Queen's University, Belfast, deputy chairman of Ulster Television and vice-chairman of Laganside Corporation, a government body promoting the development of inner city Belfast.

It is impossible to doubt his conviction when he explains his motivation for devoting two and sometimes three days of his working week to IFI business. "The reason I'm involved is because it seems to be a chance to ease the misery, unemployment and deprivation in the most disadvantaged parts of this country," he says. I'm also hoping to help in a process that may bring peace in Ireland.

[From the Irish Times, Aug. 22, 1990]

FEW ATTACKS ON FUND DISBURSEMENTS STAND UP TO SCRUTINY

The most celebrated and trivial item of notoriety associated with the International Fund for Ireland (IFI) was certainly the cash allocated towards refurbishing the frontage of the Allied Irish Bank branch in Strabane, Co. Tyrone. Typically, Sinn Fein's allies in the United States got it half-right when they alleged that the fund had paid $10,000 to help to pay for the facelift.

In fact, the sum involved was $2,500 and it had seemed justified under the terms of the urban development programme in operation by the IFI at that time (four years ago). It was never used because an embarrassed AIB refunded the money. The grant-aid was ill-advised, perhaps, but scarcely scandalous.

"I'm sure we took some wrong options, and only a fool would say we didn't make some mistakes but we didn't make all that many," says the Co. Antrim businessman, Mr. John McGuckian, who has been fund chairman since last October. "There were very few things we couldn't defend in some way, but with the benefit of hindsight, we could have avoided some difficulties that arose later. Given that we have been or are involved in 1,500 projects, some were bound to be less than perfect.

He will not accept that the fund's checking of applicants has failed because it has steadfastly refused to develop an expensive and cumbersome bureaucracy of its own, relying instead on a secretariat drawn from officials in Dublin and Belfast. "There are other benefits for this arrangement, also, in that people from both sides of the Border at all sorts of levels are working well together," he says, adding with a rare but undisguised sarcasm. "Maybe some people wouldn't like that."

Criticisms of the fund have been most stinging from U.S. sources, mainly emanating from a combination of Irish Northern Aid (Norald), the Irish American Unity Conference and the Ancient Order of Hibernians, although it is difficult at times to keep track of the cross-affiliations and memberships of various critics.

When examined individually and viewed in the context of overall IFI activities few, if any, of the attacks on fund disbursements really stand up to reasonable scrutiny. A potted selection of examples follows:

That the IFI bought the Townsend Street centre in Belfast from the British government but laundered the money through the Catholic Church to obscure the deal. Facts: the centre was purchased from the Northern Ireland Development Board by the centre's enterprise board, a bona fide community group; the IFI has helped in creating some 200 jobs on the peaceline site.

That the IFI financed foreign "junkets". Facts: true but done as part of the fund's "wide horizons" programme to provide training abroad for religiously mixed groups of young people and done specificially to meet the conditions laid down by Canada on the spending of its Can$10 million contribution.

That the fund bought a fishery vessel for the British government. Facts: true, but a research boat being used by the Northern Ireland Department of Agriculture in collaboration with the Department of the Marine in Dublin for the mutual benefit of both fishing industries.

The U.S. General Accounting Office has been very critical of the IFI's management and accountability. Facts: untrue. The IFI agreed to provide improved economic indicators of achievement, and a Peat Marwick study found that the fund was meeting its intended purpose and donor wishes; and the U.S. Agency for International Development, to which the GAO reports, has confirmed to Congress in each of the past four years that the IFI has carried out its mandate.

America is "propping up the Hillsborough deal scam" with the fund "while starving Eastern Europe and doing nothing for sub-Sahara Africa". Fact: this rather gives the game away with its strong implication that the real target of the critics is the Anglo-Irish Agreement signed in 1985 by Dublin and London. The IFI was indeed set up (in 1986) under the framework of the agreement and to give practical expression to its aspirations "to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years." The annual U.S. contribution to the fund constitutes one-quarter of one percent of the total U.S. foreign aid budget.

Grants have been given to anti-Catholic employers. Facts: the most recent USAID report to Congress on the IFI, dated March, 1990, stated that "disbursements from the IFI are distributed in accordance with the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland."

It is worth mentioning in a general sense also, vis-a-vis the Canadian insistence on youth training expenditures, that the US money was provided with the clear understanding that it would, where possible, be utilized to provide practical momentum towards job creation, i.e., to stimulate private enterprise in the direction of "commercial entrepreneurship". Thus, the fund can justify, if such be needed, its provision of grant-aid to private businesses on the grounds that its seed-money helped prompt entrepreneurial activity.

In this context, one final example. It was alleged in the US that Lacey's wine bar, in Coleraine, Co Derry, had received a grant of $100,000 from the IFI before being sold for $½ million at considerable profit. The facts, not surprisingly, are quite at variance with this tale. The bar, located in a rundown area, did indeed receive $100,000 as 30 percent funding and its development provided 25 jobs and stimulated other economic activity in the vicinity. Its owners are indeed considering selling the business, but any new owners will have to repay the IFI grant in full before they will get legal title to the property.

[From the Irish Times, Aug. 23, 1990]

FUND'S ACTIVITIES GENERATING QUITE A BIT OF HOPE AND OPTIMISM

Even his best friends wouldn't describe Mr. Charles Brett as laid back or hail-fellow-well-met. A 61-year-old Belfast solicitor and architectural historian with a lifetime's involvement in public service and the arts, his style might easily be characterised as autocratic and aloof, although nobody would have doubted his capability or his commitment during a three-year term chairing the International Fund for Ireland (IFI).

It was perhaps as well, however, that a knighthood came after the end of his IFI stint last autumn. The longer than usual hair, the natty dress style and an accent honed at Rugby and Oxford could at times have an unfortunate effect, particularly in the United States: having to address the abrassive IFI chairman as "Sir Charles" might have put the tin hat on it even for the fund's staunchest American supporters.

His successor, Antrim businessman John McGuckian, could scarcely be more different. Separated from the *de rigueur* Mercedes and the sober suits, he might perhaps pass for a cheerful, down-to-earth cattle dealer. There is even a certain enthusiastic naivety to his character, a factor which cost him dearly last April when an ABC television news item on the IFI viciously "edited" a lengthy McGuckian interview in a manner which reflected little credit on the network.

A palpable sincerity has served him well in most respects, however, not least during a briefing delivered last Friday morning in Iveagh House on St. Stephen's Green. The occasion represented something of a coup for the Department of Foreign Affairs and its embassy in Washington, both of which have been fighting a rearguard action to counteract Sinn Fein-inspired critics of the fund in the US. Seven members of the House of Representatives had been persuaded to stop over in Ireland en route to Eastern Europe on a fact-finding trip and all, bar one, were members of crucial appropriations (i.e. fund-dispersing) committees.

The two most important members of the delegation were probably David Obey, a Wisconsin Democrat who is proudly Irish-American (family name originally Aubey) and who chairs the foreign operations subcommittee of the appropriations committee; and New York Democrat Matt McHugh, an-

other appropriations member and staunch Friend of Ireland (FoI). But the other three Democrats, William Lehman (Florida), Les AuCoin (Oregon) and William Lipinski (Illinois), and two Republicans, Connie Morella (Maryland) and John Porter (Illinois) will also have influential roles to play in this autumn's final acts of the appropriations committees' drama.

The politicians had a packed flying trip on Friday, taking in lunch with Northern Secretary Mr. Brooke at Stormont and visiting three of the IFI-funded enterprise centres in Belfast before flying to Shannon. That night in Adare they were impressed by the arrival of Mr. Collins, the Minister for Foreign Affairs, who jetted in from his hectic Middle Eastern mission with the EC's ministerial troika and hosted dinner. The delegates reportedly left Shannon on Saturday with positive impressions.

It was important for the IFI that they did so. Thus far, the U.S. has contributed 80 per cent of the total funding, with $120 million in 1986-'88, another $10 million in 1989 and a further $20 million this year. In addition, the EC has provided ECU45 million for the 1989-'91 period. Canada supplied Can$10 million and New Zealand NZ$0.3 million. For next year the fund hopes to have a budget of some $50 million, made up of $20 million from the US plus the held over cash and other contributions.

Right now, according to Mr. McGuckian, some $60 million is spendable this financial year, bringing to $166 million the amount available to the end of 1990 (the comparable total to the end of 1991 would be $220 million, at least on paper).

Although the US contribution is reducing as a proportion of total funds available, its significance in symbolic and practical terms remains very substantial, not least for the boost its loss would deliver to opponents of the Anglo-Irish Agreement. In the present circumstances, only a brave man would make firm predictions about this autumn's budgeting battle in Washington, but Mr. McGuckian remains reasonably optimistic that the $20 million proposed for 1991 IFI funding will survive the appropriations haggling.

There are inchoate but distinct signs, too, that IFI supporters may be winning the war of attrition in the US. For all the undoubted annoyance of the Friends of Ireland in the House and Senate earlier this year over what they concluded was an offhand, even blasé, assumption, in Dublin that FoI support could be taken for granted, they remain firmly behind the Anglo-Irish Agreement and the Irish Government's approach to the British problem in the north.

No one has been more important in support of this stance than Congressman Brian Donnelly. FoI chairman and one of the more effective gut-politicians of the present generation of elected Irish-Americans—a group of almost incalculable importance to Dublin in that they form the first really effective pro-Ireland political lobby in a country where 40 million claim Irish ancestry, but where extraordinarily effective pro-Israel lobbyists have for decades made a comparative mockery of their relatively insignificant voting aggregate.

Mr. Donnell is also a rising star of whom the Irish Government must take serious notice in coming years. The House of Representatives Speaker, Mr. Thomas Foley will almost certainly appoint his own team this year to succeed that which he inherited from his predecessor, and Mr. Donnelly is well-placed to prosper.

And for all the warning shots the FoI leader has fired across the Irish Government's bow about the IFI's spending policy, he has been going his own combative way about sorting out the Stateside opposition. Very recently, he was pleased to receive a letter from one of his erstwhile foes in the Irish American Unity Conference pledging support for US funding of the IFI, albeit with reservations on the nature of projects supported.

The Ancient Order of Hibernians PRO, Mr. Mike Cummings, whose bitter epistolary attacks on the IFI helped fuel US doubts about the fund, may also be about to lose his power base. In May, the AOH president, Mr. Michael Coogan, was busily disowning Mr. Cummings' letters as not representing the organization's views, but it seemed rather like a belated shutting of the order's stable-door. This summer's biennial AOH convention elected St. Louis man, Mr. George Clough as national president, however, and it is generally assumed that his pro-IFI leadership team will not include Mr. Cummings.

This reporter recently visited randomly selected IFI-supported projects in counties Monaghan, Tyrone, Leitrim, Derry, Donegal and Antrim. The evidence on the ground indicated clearly that the fund is having an impact that is not less than positive in all locations and is strikingly effective in some. And although it is sometimes difficult to measure the effect of certain projects on the spirit and confidence of a disadvantaged community, it was impossible to avoid the conclusion that IFI activities are generating quite a bit of hope and optimism, quite apart from the practical matter of creating jobs. A huge breadth and variety of activities has been covered by the 1,520 projects helped or initiated to date and The Irish Times tour took in a mixed sample. They included a high-tech mushroom-compost plant near Monaghan town which supplies 220 local growers who feed a company most of whose produce is exported to the UK; a business enterprise centre in Omagh with 30 of its 37 units functioning and expert advice available on "outreach" to communities all over Fermanagh and most of Co Tyrone; depressed but picturesque Manorhamilton where £75,000 in IFI cash prompted a further £100,000 of Leitrim county council spending, transformed the town's appearance and sparked local pride to improve shopfronts and homes; resurgent Derry, where IFI seed-money looks set to help create community-based commercial hearts in the windblown housing estates west above the city; Donegal, where development officer Mr. Pat Bolger—white-bearded visionary of the country's co-op movement—was fulsome in praise of the psychological lift the £278,000 IFI spending to date has provided in a county where tourist numbers are only now reaching 1966 peaks again and where "every shrub, every lick of paint helps"; and of course, Belfast, where International Fund money helps stimulate five enterprise centres already busy with local small businesses, manufacturing as well as service industries.

Sitting in the busy offices of the Townsend Street centre which straddles the peaceline between the Falls and Shankill roads, the West Belfast Enterprise Board chairman, Mr. Frank Murphy, spoke with pride of the bustle in the units outside and said simply: "Nothing would have happened here without the International Fund money."

[From the Irish Times, Aug. 27, 1990]

A FUND OF HOPE

It's ironical that any project designed to promote reconciliation on this island should be considered suspect by those who most stridently proclaim their dedication to unity; ironical but, in the nature of things, virtually inevitable.

The International Fund for Ireland is not just any project. It was established by the Irish and British Governments, one of the by-products of the Anglo-Irish Agreement. Its purpose is to channel financial support for the agreement from the United States, Canada, New Zealand and the European Community. Its most substantial contribution so far, $150 million, has come from the United States.

These, in the eyes of its critics, were features of the fund which lent weight to suspicions that were deepened by the tactic of using public funds to lever investment from private enterprise and local communities. And in some instances at least the local projects helped bore the marks of hasty choice. But as Niall Kiely demonstrated in his reports in The Irish Times last week, many of the criticisms were ill-founded or based on distortions emanating from partisan American-Irish opponents of the Anglo-Irish Agreement.

These groups included Noraid, the Irish American Unity Conference and the Ancient Order of Hibernians. In their angry world distance lends disenchantment to any view of Ireland which is not painted in black and white and from which the usual characters from the familiar cast of demons are missing.

The fund's organisers have made mistakes. Some of them might have been avoided if they had given more thought to how their work might appear to people ready to bite any helping hand. They have probably gained from the experience. And Ireland North and South has benefited from a fund which started or helped more than 1,500 projects since 1986—generating, as the last of The Irish Times reports had it, quite a bit of hope apart from the practical matter of creating jobs.

Focusing American attention on the hopeful and practical rather than the tragic in Irish life would be a worthwhile achievement in itself. The fund's energetic new chairman, John McGuckian, is conscious of both the symbolism and the practical results. The Government, which occasionally allows its attention to stray from the fund's potential, would do well to contribute more forcefully to the effort.

TRIBUTE TO BRIG. GEN. WILLIAM H.L. MULLINS

Mr. WARNER. Mr. President, it is with great sadness that I rise today to pay tribute to the late William H.L. "Moon" Mullins, a retired Air Force brigadier general and former corporate vice president for government affairs of General Dynamics Corp. General Mullins died September 29 as a passenger in a restored P-51 Mustang, World War II fighter plane, with the pilot, George F. Enhorning, in Chatham, MA.

General Mullins was a heavily decorated combat veteran of the Vietnam war who led a distinguished military career for 22 years of service to our

Nation. His military decorations included the Distinguished Flying Cross with 4 Oak Leaf Clusters, the Bronze Star Medal, the Meritorious Service Medal with 1 Oak Leaf Cluster, the Air Medal with 12 Oak Leaf Clusters, the Air Force Commendation Medal with 1 Oak Leaf Cluster, and the Air Force Outstanding Unit Award with 1 Oak Leaf Cluster for Valor.

General Mullins was born in Independence, MO, on February 9, 1935. He began his military career in 1957 as a commissioned officer of the U.S. Military Academy at West Point. Following graduation, he attended flight training and received his pilot wings in 1958. As a trained F-100 pilot, he completed his first operational assignment with the 8th Tactical Fighter Wing at Itazuke Air Base in Japan, serving from June 1959 to June 1961. Over the next 2 years, General Mullins was the aide-de-camp to the Commander of the 13th Air Force at Clark Air Base, Republic of the Philippines, while remaining combat-ready in the F-100.

In July 1963, General Mullins served as an F-4 instructor pilot at MacDill Air Force Base, FL, and later at Davis-Monthan Air Force Base in Arizona. Following graduation in 1967 from the Air Command and Staff College at Maxwell Air Force Base, AL, he rejoined the 8th Tactical Fighter Wing in Ubon Royal Thai Air Force Base, Thailand, as the Wing F-4 standardization and evaluation chief. During his years in Thailand, he flew 146 combat missions, 116 of them over North Vietnam.

General Mullins received a master's degree in business administration from the University of Arizona and later served in the Pentagon from 1968 to 1971 as a staff officer for Headquarters, U.S. Air Force, in the Directorate of Operations and the Directorate of Budget. As a graduate of the National War College in 1972, he served as the assistant deputy commander and later as the deputy commander for operations, at the 4th Tactical Fighter Wing at Seymour Johnson Air Force Base in North Carolina.

In 1974, General Mullins distinguished himself as a member of the Six-Man Group for the Chief of Staff of the U.S. Air Force. He retired from the Air Force in 1979, after serving as the Deputy Director of Legislative Affairs, and joined General Dynamics as its deputy director of legislative affairs.

General Mullins is survived by his wife, the former Florine Lucy Magnani, who lives in Alexandria, VA, and their two sons, Dan, a second lieutenant in the U.S. Air Force, who is stationed in Mississippi, and Todd of Alexandria.

Mr. President, we mourn the tragic loss of General Mullins but remember and honor his many years of distinguished military service to our Nation.

NOTIFICATION FROM THE PRESIDENT ON FREE TRADE NEGOTIATIONS WITH MEXICO

Mr. BENTSEN. Mr. Chairman, earlier this week President Bush formally notified me, as chairman of the Finance Committee and pursuant to section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, of his intent to enter into free trade negotiations with Mexico. President Bush further informed me that the United States will be consulting with Canada and Mexico in coming months concerning whether Canada also will participate in the negotiations.

In order to provide all Members with full information on this notification from the President, I hereby request that a copy of the President's letter appear in the CONGRESSIONAL RECORD.

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

THE WHITE HOUSE,
Washington, September 25, 1990.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In a letter to me of August 21, President Salinas formally proposed initiation of negotiations for a free trade agreement between the United States and Mexico (copy enclosed). As you know, President Salinas and I had endorsed the objective of a free trade agreement at a meeting in June, and our respective Trade Ministers, Secretary Serra and United States Trade Representative Hills, had so recommended in a joint report of August 8 (copy enclosed).

Mexico is our third largest trading partner, and you are aware of the dynamic, market-oriented reforms undertaken by President Salinas. We see substantial opportunities for mutual benefit in further lowering impediments to bilateral trade in goods and services and to investment.

Accordingly, I welcome the recommendations in the joint report and President Salinas' proposal. Negotiation of a comprehensive free trade agreement is consistent with the efforts of both my Administration and the Congress to eliminate barriers to the flow of goods, services and investment and to protect intellectual property rights.

Therefore, pursuant to Section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, I am hereby notifying the House Committee on Ways and Means of trade negotiations with Mexico.

I also want to inform you that the Government of Canada has recently expressed a desire to participate in the negotiations, with a view to negotiating an agreement or agreements among all three countries. I welcome the opportunity to work with our two neighbors towards this end. We, with the Canadian and Mexican Governments together, will be consulting in the coming months to explore the possibilities in his regard, which we will also discuss with your committee. I will send a further or revised notice to your Committee as appropriate, depending on the outcome of our consultations.

I want to emphasize that such trilateral consultations will not affect the continued validity of the existing free trade agreement with Canada. Further, in all these discussions, we expect to build on our multilateral negotiating efforts in the Uruguay Round, which is scheduled to conclude at the end of this year.

Ambassador Hills has already begun consultations with your Committee, and the Administration will continue that process throughout the negotiations.

Sincerely,

GEORGE BUSH.

DR. JOHN HARTE

Mr. WIRTH. Mr. President, I rise today to share with my colleagues a recent article about the cutting edge scientific work that is occurring in Colorado under the leadership of Dr. John Harte, a brilliant researcher out of the University of California at Berkeley.

One of our best kept scientific secrets is the Rocky Mountain Biological Laboratory, which is based in Gothic, CO. Every summer, many of the Nation's best and brightest scientific minds gather at RMBL to preside over scientific investigations in Colorado's high country. The cast of characters includes Dr. Harte, the renowned population biologists Anne and Paul Ehrlich, as well as John Holdren, who is probably our foremost nuclear physicist and one of the Nation's best minds. And every summer as I travel through the State, we get together at RMBL and I have the opportunity to learn a great deal about science in those wonderful later afternoons.

I was reminded of this, Mr. President, when I came across the October issue of Discover magazine. Anyone who is concerned about the issue of global warming needs to be aware of the Discover article that details an exciting new experiment that John Harte has established in Colorado. Scientists know a great deal about global warming—that our atmosphere acts like the walls of a greenhouse; that the gases that have the ability to warm the atmosphere are increasing rapidly in concentration; and that the Earth has warmed by about one degree during the past century. On the other hand, the state of science has not advanced to the point where scientists can tell us exactly what will happen as the Earth warms in the future. Dr. Harte's research in the mountains of Colorado will provide important new information about the effect of global warming on our biologic resources.

I highly recommend this article to all of my colleagues. And I applaud the work of Dr. Harte and all of his colleagues at the Rocky Mountain Biological Laboratory.

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

HOT SPOT

(By Glen Martin)

This high mountain meadow in the middle of the Colorado Rockies hardly seems the place for apocalyptic research. Groves of quaking aspen dip down to vales covered with blue-flowered larkspur and a few yellow dandelions. Pea plants called lupines are beginning to unfurl long banners of pink, white, and blue blooms. A creek murmurs nearby, gorged with spring snowmelt and mountain trout. High above, a bald eagle rides the thermals.

And sweating profusely in the bright June sun, John Harte struggles to tighten a web of cables that crisscross a section of the meadow. "This project has really made me admire the engineering skills of spiders," Harte grumbles.

Harte, a 51-year-old ecologist from the University of California at Berkeley, has stretched a 12-foot-high grid of shiny cables above 300 square yards of turf. The cables are supported by four steel towers, one at each corner of the grid. And hanging down from the cables are ten infrared heat lamps, each about three feet long.

By heating up the meadow, this bizarre assemblage is supposed to simulate what many see as the coming apocalypse. "The scientific community is virtually unanimous about global warming," says Harte. "By 2050, if we continue to load trace gases—mainly carbon dioxide—into the atmosphere at our current rate, we can expect Earth's temperature to increase by anywhere from three to nine degrees. The Vostok record confirms that."

That record is a series of cores drilled from the ice in Vostok, Antarctica. The ice has been deposited at various times throughout the past 160,000 years, and bubbles trapped within it give geologists pristine samples of Earth's atmosphere at the time the ice was formed. By comparing the gas in these bubbles with other geologic evidence that indicates how warm or cold Earth's climate was then, researchers can relate greenhouse gases to increased temperatures.

They gauge the change in global temperature from the relative amounts of two isotopes of oxygen, O_{18} and O_{16}, in the fossilized shells of marine animals. During extended cold periods the lighter O_{16}, instead of readily evaporating from the seas and then returning as icemelt or rain, gets trapped in the planet's growing ice caps. Shells formed then thus have higher than normal concentrations of heavy O_{18}. In warmer times, the ratio of the two isotopes is less extreme.

Matching isotope ratios with Vostok bubbles has revealed that atmospheric carbon dioxide levels and global temperatures track each other unerringly: when CO_2 goes up, so does temperature. "But we don't know much about the mechanisms involved," says Harte. And that has led him to his meadow.

Harte is trying to learn whether greenhouse warming could start a vicious cycle that would cause the effects to be even worse than are now predicted. "We know that trace gases—mainly carbon dioxide, methane, and nitrous oxide—heat up the atmosphere," he says. "Now we need to know whether that heat stimulates further trace-gas releases from the soils. It's possible that the increased temperatures can stimulate the activity of soil microorganisms."

When a soil microbe sits down to a hearty meal of such typical soil nutrients as nitrogen and phosphorous, it discharges considerable amounts of carbon dioxide, nitrous oxide, and methane as waste products. What concerns Harte is that warmer soils could mean hungrier microbes and more gas—and thus more heat.

Harte's spider web is designed to reveal whether this is likely to come to pass. He has divided his grid into ten sections, each covering 30 square yards of meadow. Infrared lamps will heat every other section by 2.5 degrees, the increase expected in this part of the Rockies for the middle of the coming century. The unheated sections in between allow researchers to compare the effects of the lamps with the natural state of the meadow.

The experiment will begin this December and run for a minimum of three years. Once a week, Harte will take gas samples from buckets turned upside down for ten minutes at a time on both the heated and unheated strips. He'll draw the samples through fitted nipples at the bottoms of the buckets via syringes, then analyze them with a gas chromatograph. "We'll be able to plot any changes in the meadow very precisely," he says.

Some of those changes could be alterations in the very fabric of the seasons. With a 2.5-degree rise in temperature snow at high elevations might melt up to two months sooner. In Colorado that would mean March instead of May. The result would be soil that is drier and warmer by the time May rolls around "You'd be expanding summer at the expense of winter," says Harte.

That could have particularly grim consequences for specialized plants and animals. In the past, species that favor cool climes have responded to great episodes of global warming by migrating north, or to higher, colder elevations. But these adjustments, Harte points out, "took place over thousands of years. In the current episode of global warming we're talking fifty or sixty years. That's probably not enough time for most plants and animals to adjust."

Harte's "greenhouse meadow" runs along a slope and covers three different zones of vegetation. Species that require dry soil, like sage, thrive at the top, water-loving plants like veratrum grow at the bottom, and moderate-moisture fans—larkspur and lupine among them—favor the middle. Over the next three years, Harte expects, this situation will change. "We expect less biological diversity, although we don't know to what degree," he says. But plants favoring the wettest soil might be knocked out of the picture altogether.

Early warming can have other, more insidious effects. Some plants, such as larkspur, bloom when the snow first melts. But one of larkspur's most important pollinators, the broad-tailed hummingbird, times its migrations by the sun. As the days get longer, the hummingbird follows the sun north, where it finds its favorite flower in full bloom.

"If the atmosphere warms abruptly," says Harte, "we could see the larkspur bloom weeks before the first hummingbirds get to it. That would be harmful for both species." Without flowers to attract the birds, larkspur will have difficulty reproducing. And without larkspur to eat, the birds will starve.

Harte doesn't expect anything dramatic to happen when he turns on the grid in December—the current will simply turn on the infrared lamps. The real drama lies three years down the road, when the results are in. Harte does not expect them to be comforting: "If I had to hazard a guess, I'd say this project will confirm what we suspect—that we don't have any time to waste."

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,026th day that Terry Anderson has been held captive in Beirut.

DETERIORATING HUMAN RIGHTS CONDITIONS IN KENYA

Mrs. KASSEBAUM. Mr. President, last Friday the Kenyan Government, under President Daniel arap Moi, banned the Nairobi Law Monthly—a popular and influential journal which had championed political freedom, basic civil rights, and multiparty democracy. This action is the most recent in a series of strong-armed tactics by the Moi regime to stifle its peaceful critics.

The 1989 State Department human rights report described the increasingly repressive political environment in Kenya—including forced deportations, police brutality, detentions, and growing signs of executive manipulation of the judicial system.

During the 1989 markup of the foreign aid authorization bill, I expressed strong concern about the deteriorating human rights situation in Africa and had language included in the legislation linking Kenya's human rights performance to its foreign aid. Since that time, President Moi's policies have only become harsher.

Earlier this summer, President Moi ordered the imprisonment of dozens of prominent lawyers and human rights activists, including Gitobu Imanyara, editor of the now banned Nairobi Law Monthly, and two former Cabinet ministers who had spoken out for democracy, Charles Rubia and Kenneth Matiba. Mr. Rubia and Mr. Matiba remain in jail, held without charge.

As human rights conditions deteriorate, the United States Government continues to supply Kenya with nearly $50 million in aid, the largest amount for a nation in sub-Saharan Africa. For fiscal year 1991, the House has passed the foreign operations appropriations bill which provides $33 million in economic aid and $9 million in military aid to Kenya.

Mr. President, I believe that the situation in Kenya has reached the point where we must send a clear and firm message to the Government in Nairobi that we will not tolerate the continued suppression of basic human rights and civil liberties. In order to convey our strong disapproval of the current policies, I support the cessation of all military aid and economic support funds to Kenya until the human rights situation improves.

Furthermore, I believe that Congress should adopt legislation requiring the administration to notify Congress 15 days in advance of any obligation of aid to Kenya. This position was

supported by the committee in 1989. Through this mechanism, Congress would be able to closely follow the status of human rights in Kenya, and would be able to maintain pressure on the Kenyan Government to respect civil liberties and basic human rights.

This is an encouraging time for those of us who watch events in sub-Saharan Africa. Many former oppressive, one-party African states have opened up—increasing respect for basic civil liberties and political rights. Yet, the Government of Kenya, an important United States ally in Africa, is moving in the opposite direction—closing their society by choking free speech and suppressing civil liberties.

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 1974. An act to require new televisions to have built-in decoder circuitry; and

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3897) to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5725) to extend the expiration date of the Defense Production Act of 1950.

The message also announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 647) to amend the Federal securities laws in order to provide additional enforcement remedies for violations of those laws.

The message further announced that the House has passed the bill (S. 916) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes; it insists upon its amendment to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ROE, Mr. BROWN of California, Mr. NELSON of Florida, Mr. HALL of Texas, Mr. VOLKMER, Mr. MINETA, Mr. TORRICELLI, Mr. NAGLE, Mr. HAYES of Louisiana, Mr. TANNER, Mr. WALKER, Mr. SENSENBRENNER, Mr. LEWIS of Florida, Mr. PACKARD, Mr. BUECHNER, and Mr. CAMPBELL of California as managers of the conference on the part of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 3007. An act to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to provide additional authorizations for appropriations.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 12:09 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances;

H.R. 5725. An act to extend the expiration date of the Defense Production Act of 1950; and

S.J. Res. 301. Joint resolution designating October 1990 as "National Breast Cancer Awareness Month."

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

At 2:42 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 198) to amend title 17, United States Code, the Copyright Act to protect certain computer programs; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4567. An act to authorize an exchange of lands in South Dakota and Colorado;

H.R. 5144. An act to provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes; and

H.R. 5316. An act to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The message further announced that pursuant to the provisions of section 203(b) of Public Law 101-194, the Speaker appoints Mr. Warner Brandt; and the minority leader appoints Mr. William R. Pitts, Jr., to the President's Commission on the Federal Appointment Process.

At 4:18 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolutions, each without amendment:

S. 1128. An act for the relief of Richard Saunders;

S. 1229. An act for the relief of Maria Luisa Anderson;

S. 1683. An act for the relief of Paula Grzyb;

S. 1814. An act for the relief of Wilson Johan Sherrouse;

S.J. Res. 181. Joint resolution to establish calendar year 1992 as the "Year of Clean Water"; and

S.J. Res. 301. Joint resolution designating October as "National Breast Cancer Awareness Month."

The message also announced that the House disagrees to the amendments of the Senate to the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the U.S. Government for the fiscal years 1991, 1992, 1993, 1994, and 1995; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. PANETTA, Mr. GEPHARDT, and Mr. FRENZEL as managers of the conference on the part of the House.

The message further announced that the Speaker appoints the following additional conferees and modifications in the appointments previously made in the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2830) entitled "An Act to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes":

From the Committee on Foreign Affairs, for consideration of titles IX (except sections 1124, 1125, 1134, 1137, and subtitle E), XXIII (except section 2306), sections 114, 1423, 1551, 1751-60, 1763, and 1765 of the Senate bill, and title XII (except sections 1241 and 1243-46) and sections 415, 1313(a), and 1833 of the House amendment, and modifications committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. WOLPE, Mr. CROCKETT, Mr. GEJDENSON, Mr. DYMALLY, Mr. KOSTMAYER, Mr. LEVINE of California, Mr. BROOMFIELD, Mr. GILMAN, Mr. LAGOMARSINO, Mr. LEACH of Iowa, Mr. ROTH, and Mr. BEREUTER.

From the Committee on Foreign Affairs, for consideration of subtitle E of title XI, sections 1931-1935 and 1937-1939 of the Senate bill, and title XXX of the House amendment, and modifications committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. GEJDENSON, Mr. BROOMFIELD, and Mr. ROTH.

From the Committee on Merchant Marine and Fisheries, for consideration of subtitle E of title XI of the Senate bill, and title XXX of the House amendment, and modifications committed to conference: Mr. JONES of North Carolina, Mr. STUDDS, Mr. HUBBARD, Mr. TAUZIN, Mr. HERTEL, Mr. LIPINSKI, Mr. DAVIS of Michigan, Mr. YOUNG of Alaska, Mr. LENT, and Mr. FIELDS.

From the Committee on Merchant Marine and Fisheries, for consideration of sections 1238, 1286, and 1422

of the Senate bill, and sections 1314 and 1602 of the House amendment, and modifications committed to conference: Mr. JONES of North Carolina, Mr. STUDDS, Mr. HERTEL, Mr. DAVIS of Michigan, and Mr. YOUNG of Alaska.

From the Committee on Ways and Means, for consideration of section 902, those portions of section 1121 adding new sections 101(5), 103(5), 113(c)(2), 114, 204(c)(2)(B), 404-05, 503(b)(3), 504, and 601 (c) and (f) to the Agricultural Trade Act of 1978, sections 1122, 1124-25, 1137, 1716(c), that portion of section 2123 adding a new section 7A(e) to the Cotton Research and Promotion Act, sections 2140, 2155(g), 2178, 2188, 2203, 2306, 2452, and 2454 of the Senate bill, and sections 614, those portions of section 1221 adding new sections 101(4), 105(a), 106, 402 (c) and (f) to the Agricultural Trade Act of 1978, sections 1223(i), 1241, 1243, 1245-47, 1428, 1445(g), 1468, 1475(3), 1485(d) and 1494 of the House amendment, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. JENKINS, Mr. ARCHER, and Mr. CRANE: Except, that, for consideration of sections 2203, 2452, and 2454 of the Senate bill, Mr. JACOBS is appointed in lieu of Mr. JENKINS.

From the Committee on Ways and Means, for consideration of sections 1134, 1721, and 1730A of the Senate bill, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. JENKINS, Mr. DOWNEY, Mr. PEASE, Mr. RUSSO, Mr. GUARINI, Mr. MATSUI, Mr. ANTHONY, Mr. ARCHER, Mr. VANDER JAGT, Mr. CRANE, Mr. FRENZEL, Mr. SCHULZE, and Mr. THOMAS of California.

From the Committee on Energy and Commerce, for consideration of sections 1761 and 1762 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. WYDEN, Mr. SIKORSKI, Mr. BRUCE, Mr. ROWLAND of Georgia, Mr. SYNAR, Mr. HALL of Texas, Mr. ECKART, Mr. LENT, Mr. DANNEMEYER, Mr. WHITTAKER, Mr. TAUKE, Mr. BLILEY, and Mr. FIELDS.

From the Committee on Energy and Commerce, for consideration of sections 1495, 1497, and 1498 J-L of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ROWLAND of Georgia, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of section 1437 of the Senate bill, and section 1367(b) of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ECKART, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of title XVI (except sections 1615-16, 1620 (b), (c), (d), and (f)) and section 1716 of the Senate bill, and sections 1495 95G, 1495 J-95L, 1495M (a), (e), and (g) and 1495 N-95V of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. BRUCE, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of subtitle C of title XVII of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. WYDEN, Mr. LENT, and Mr. BLILEY.

From the Committee on Energy and Commerce, for consideration of section 1773 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ROWLAND of Georgia, Mr. LENT, and Mr. WHITTAKER.

From the Committee on Energy and Commerce, for consideration of section 1772 of the Senate bill, and section 1376A of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. THOMAS A. LUKEN, Mr. SWIFT, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of section 1948 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. THOMAS A. LUKEN, Mr. SWIFT, Mr. LENT, and Mr. WHITTAKER.

From the Committee on Energy and Commerce, for consideration of sections 2033(3)(F), 2079, and 2081 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. MARKEY, Mr. SWIFT, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of sections 1339, of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. TOWNS, Mr. LENT, and Mr. BLILEY.

From the Committee on Agriculture, for consideration of those portions of section 1121 adding new sections 101(5), 103(5), 113(c)(2), 114, 204(c)(2)(B), 404-05, 503(b)(3), 504, and 601 (c) and (f) to the Agricultural Trade Act of 1978, of the Senate bill, and those portions of section 1221 adding new sections 101(4), 105(a), 106, 203 and 402 (c) and (f) to the Agricultural Trade Act of 1978, of the House amendment, and modifications committed to conference: Mr. ESPY, Mr. HARRIS, Mr. SARPAULIS, Mr. EMERSON, and Mr. ROBERT F. SMITH.

From the Committee on Education and Labor, for consideration of sections 1496(b), 1498-1498N, 1965, 1966, 2471, 2474, 2476, and 2479 of the Senate bill, and sections 1382, 1774, 1842(b) of the House amendment, and modifications committed to conference: Mr. HAWKINS, Mr. FORD of Michigan, Mr. GAYDOS, Mr. GOODLING, and Mr. TAUKE.

From the Committee on Science, Space, and Technology, for consideration of sections 1921-30, 1940, and 1944-46 of the Senate bill, and modifications committed to conference: Mr. ROE, Mr. SCHEUER, Mr. MCMILLEN of Maryland, Mr. WALKER, and Mr. SCHNEIDER.

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1350 of the Senate bill, and modifications committed to conference: Mr. ERDREICH, Mr. KANJORSKI, Mr. CARPER, Mr. BEREUTER, and Mr. ROTH.

In the appointment of conferees previously announced from the committee on Agriculture:

The appointment of Mr. CONDIT is amended by deleting section 1215 from the exception for title XII of the House amendment.

The appointment of Ms. LONG is amended by deleting section 1215.

Mr. ROBERT F. SMITH is appointed in lieu of Mr. MARLENEE for title XII of the Senate bill and title XVI of the House amendment.

Mr. MORRISON of Washington is appointed in lieu of Mr. MARLENEE for title XIII of the Senate bill and title XXIX of the House amendment.

Mr. GRANDY is appointed in lieu of Mr. HOPKINS for all provisions except title VII and section 1962 of the Senate bill, and title VIII and section 1249 of the House amendment, on which Mr. HOPKINS will remain a conferee, and Mr. LEWIS of Florida is appointed in lieu of Mr. HOPKINS for subtitle A of title XVII of the Senate bill and title XIV of the House amendment.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 1608. An act to strengthen nutrition monitoring by requiring the Secretary of Agriculture and the Secretary of Health and Human Services to prepare and implement a 10-year plan to assess the dietary and nutritional status of the United States population, to support research on, and development of, nutrition monitoring, to foster national nutrition education, to establish dietary guidelines, and for other purposes;

H.R. 4491. An act entitled the "Coast Guard Omnibus Act of 1990";

H.R. 5063. An act to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona, and for other purposes; and

H.J. Res. 658. Joint resolution to support actions the President has taken with respect to Iraqi aggression against Kuwait and to demonstrate United States resolve.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 329. Concurrent resolution calling for U.S. sanctions against nations which conduct unjustified lethal whale research, and otherwise expressing the sense of the Congress with regard to nations which violate the International Whaling Commission moratorium on commercial whaling by killing whales under the guise of scientific research.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4491. An act entitled the "Coast Guard Omnibus Act of 1990"; to the Committee on Commerce, Science, and Transportation.

H.R. 4567. An act to authorize an exchange of lands in South Dakota and Colorado; to the Committee on Energy and Natural Resources.

H.R. 5144. An act to provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes; to the Committee on Energy and Natural Resources.

H.J. Res. 658. Joint resolution to support actions the President has taken with respect to Iraqi aggression against Kuwait and to demonstrate United States resolve; to the Committee on Foreign Relations.

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5746. An act to extend the Export Administration Act of 1979, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 329. Concurrent resolution calling for United States sanctions against nations which conduct unjustified lethal whale research, and otherwise expressing the sense of the Congress with regard to nations which violate the International Whaling Commission moratorium on commercial whaling by killing whales under the guise of scientific research; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3018. A bill to require the Secretary of Agriculture to announce an acreage limitation program for the 1991 crop of wheat.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2840. An act to reauthorize the Coastal Barriers Resources Act, and for other purposes.

H.R. 3898. An act to require certain procedural changes in the United States district courts in order to promote the just, speedy, and inexpensive determination of civil acquisitions, and for other purposes.

H.R. 5063. An act to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona, and for other purposes.

H.R. 5316. An act to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

H.R. 5381. An act to implement certain proposals of the Federal Courts Study Committee, and for other purposes.

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. AKAKA) announced that on September 27, 1990, he had signed the following enrolled bills which had previously been signed by the Speaker of the House:

S. 535. An act to increase civil monetary penalties based on the effect of inflation;

S. 2075. An act to authorize grants to improve the capability of Indian tribal governments to regulate environmental quality;

H.R. 2761. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United Services Organization; and

H.R. 4962. An act to authorize the minting of commemorative coins to support the training of American athletes participating in the 1992 Olympic Games.

ENROLLED BILL AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 2, 1990, he had presented to the President of the United States the following enrolled bill and joint resolution:

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparibility allowances; and

S.J. Res. 301. Joint resolution designating October 1990 as "National Breast Cancer Awareness Month".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 591. A bill to amend the Federal Rules of Criminal Procedure with respect to the examination of prospective jurors (Rept. No. 101-486).

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1742. A bill to further the goals of the Paperwork Reduction Act and provide for comprehensive information resources management of Federal departments and agencies, and for other purposes (Rept. No. 101-487).

By Mr. PELL, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

S. 2436. A bill to amend the Peace Corps Act to extend the authorizations of appropriations for the Peace Corps through fiscal year 1992, to provide for limited exceptions to the limitation on reemployment by the Peace Corps, and to establish a Peace Corps foreign fluctuations account, and for other purposes.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and an amended preamble:

S. Con. Res. 113. A concurrent resolution expressing the sense of the Congress on international nuclear sales to South Asia.

By Mr. PELL, from the Committee on Foreign Relations, with amendments and with a preamble:

S. Con. Res. 141. A concurrent resolution expressing the sense of the Congress regarding the deteriorating human rights situation in Kenya.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

James O. Mason, of Utah, to be Representative of the United States on the Executive Board of the World Health Organization;

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Forty-fifth Session of the General Assembly of the United Nations:

Representatives: Thomas R. Pickering, of New Jersey. Alexander Fletcher Watson, of Massachusetts.

Alternate Representatives: Jonathan Moore, of Massachusetts. Jacob Stein, of New York. Shirin R. Tahir-Kheli, of Pennsylvania. Milton James Wilkinson, of New Hampshire.

Katherine D. Ortega, of New Mexico, to be an Alternative Representative of the United States of America to the 45th Session of the General Assembly of the United Nations;

Scott M. Spangler, of Arizona, to be an Assistant Administrator of the Agency for International Development;

Cheryl Feldman Halpern, of New Jersey, to be a member of the Board for International Broadcasting for a term expiring April 28, 1991; and

William H.G. Fitzgerald, of the District of Columbia, to be a Member of the Board of Directors of the African Development Foundation for a term expiring February 9, 1996.

The following-named persons to be Members of the U.S. Advisory Commission on Public Diplomacy for terms expiring July 1, 1991:

William J. Hybl, of Colorado and Richard B. Stone, of the District of Columbia.

Eugene L. Scassa, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belize.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Euguene Luigi Scassa

Post: Ambassador to Belize

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, Susan, (wife) David and Eugene (children), none.
4. Parents, both parents are deceased.
5. Grandparents, both deceased.
6. Brothers and Spouses names, Angelo Scassa (brother) and his wife Sylvia, none.
7. Sisters and Spouses, none.

Richard C. Brown, of Maryland, a Career Member of the Senior Foreign Services, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Oriental Republic of Uruguay.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Richard C. Brown

Post: American Embassy, Montevideo

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse Elizabeth Ann Brown, none.
3. Children and spouses names, Tara (daughter) Justin (son), none.
4. Parents names, Helen F. Brown, Charley C. Brown (deceased).
5. Grandparents names, deceased for 20 yrs.
6. Brothers and spouses names, Jerry D. Brown, Billie Brown (spouse),none.
7. Sisters and spouses names, Charlene Larsen, Bud Larsen (spouse), none.

Michael Martin Skol, of Illinois, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraorinary and Plenipotentiary of the United States of America to the Republic of Venezula.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nonination and ending on the date of the nomination.)

Nominee: Michael Martin Skol.
Post: Ambassador to Venezuela.
Contributions, amount, date, and donee.
1. Self, $200, January 11, 1988 Steven Kramer for Congress (Democratic primary, New Mexico).
2. Spouse, Claudia Serwer Skol, none.
3. Children and spouses names, none.
4. Parents Ted Skol (deceased), Rebecca Skol, none.
5. Grandparents names (Clara Grossman, Al Williams, Max Skolnik, Sophie Skolnik) (all deceased prior to 1986).
6. Brothers and spouses names, David Skol (no spouse), none.
7. Sisters and spouses names, none.

Edward P. Brynn, of Vermont, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Edward Byrnn.
Post: Ouagadougou.
Contributions, amount, date, and donee:
1. Self, none.
2. Spouse, none.
3. Children and spouses names, Edward Cooke Brynn, Anne Elizabeth Callahan Brynn, Justin Oliver Norsworthy Brynn, Kierman Patrick Flynn, Sarah Frailey Flynn.
4. Parents names, Walter and Mary Brynn (Deceased).
5. Grandparents names, Soeren and Agnes Brynn, Lawrence and Ellen Callahan (Deceased).
6. Sisters and spouses names, Katherine and Charles Walther, Mary Anne and Terrence O'Brien.
7. Brothers and spouses names, Thomas and Claudia Brynn, Lawrence and Heather Brynn, David and Louise Brynn.

Stephen H. Rogers, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Swaziland.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Stephen H. Rogers.
Post: Swaziland.
Contributions, amount, date, and donee:
1. Self, 2. Spouse (Joint contributions) $50, January 20, 1986, Democratic Nat'l Comm. (DNC), $50, March 8, 1986, Milliken for Congress, $25, June 16, 1986, Dem. Campaign Comm., $100 ea. on March 28, 1987, August 28, 1988, November 14, 1988 and January 19, 1989, DNC.
3. Children and spouses names, Kryston R. Fischer, $100, 1988, DNC.
4. Parents names, deceased.
5. Grandparents names, deceased.
6. Brothers and spouses names, John W. Rogers (Mrs.) Barbara H. Rogers.
7. Sisters and spouses names, deceased.
Other Children: F. Halsey Rogers—none, Julia L. Rogers—none, John H. Rogers—none.

Arlene Render, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of The Gambia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Arlene Render.
Post: Gambia.
Contributions, amount, date, and donee:
1. Self, Arlene Render.
2. Spouse, N/A.
3. Children and spouses names, N/A.
4. Parents names, Oscar Render, Isabella Render, deceased.
5. Grandparents names, Rueben and France Render, deceased. Oscar and Susie Martin, deceased.
6. Brothers and spouses names, Richard Render, Jeffrey Render.
7. Sisters and spouses names, Carol Lockette, Rosalyn Hill.

Herbert Donald Gelber, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Mali.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Herbert Donald Gelber.
Post: Ambassador to Mali.
Contributions, amount, date, and donee:
1. Self, none.
2. Spouse, none.
3. Children and spouses names, Michael S., Esther L., Miriam.
4. Parents names, deceased.
5. Grandparents names, deceased.
6. Brothers and spouses names, Harvey, Natalie.
7. Sisters and spouses names, none.

Gordon L. Streeb, of Colorado, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Gordon L. Streeb.
Post: Zambia.
Contributions, amount, date, and donee:
1. Self, none.
2. Spouse, none.
3. Children and spouses names, Kurt, Kent, Kerry-Lynn Streeb, none.
4. Parents names, Gerhard O. Streeb, none.
5. Grandparents names, Hans and Frieda Streeb, deceased. Alex and Mary Martin, deceased.
6. Brothers and spouses names, none.
7. Sisters and spouses names, Imogene and Alfred Clay, none. Amelia Streeb, deceased.

Harmon Elwood Kirby, of Ohio, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Togo.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Harmon E. Kirby.
Post: Ambassador to Togo.
Contributions, amount, date, and donee:
1. Self, none.
2. Spouse, none.
3. Children and spouses names, Caroline P. Kirby, Christopher H. Kirby, none.
Parents names, Julia E. Kirby (Mother), Cecil Kirby (Father) deceased.
5. Grandparents names, John B. Tucker, deceased, John Vance-Kirby, deceased, Sarah Tucker, deceased.
6. Brothers and spouses names, none.
7. Sisters and spouses names, none.

Leonard H. O. Spearman, Sr., of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Dr. Leonard H. Spearman
Post: Amb. to the Kingdom of Lesotho
Contributions, amount, date, and donee:
1. Self, and
2. Spouse, Valerie B. Spearman:
Reported for 1987 Clearance:
$200.00, Sept. 30, 1984, Harris County Council of Organizations. $130.00, Jan. 7, 1985, Donohoe for State Office, $30.00 Oct. 24, 1985, Elizabeth Spates for Houston Independent School Board, $75.00, Aug. 16, 1986, Jack Fields for Congress, $100.00, October 7, 1986, Bill Clements Hqtrs. in Black Community, $700.00, Oct. 29, 1986, Republican Party of Harris County, Texas, $370.00, Jan. 5, 1987, Texas Inaugural Committees, $50.00, March 2, 1987, The Texas Committee of 300, and $50.00, March 2, 1987, Circle R Republican Club.
New Contributions Reported for 1990 Clearance:
$2,000.00, 1988, George Bush Campaign (Presidential). $1,300.00, Dec. 16, 1988, Republican Senatorial Inner Circle, $41.50, July 1, 1989, Republican Party of Texas, $100.00, July 19, 1989, Congressman Tom DeLay, $100.00, Feb. 13, 1990, Republican Party of Texas, and $1,000.00, March 27, 1990, Senator Phil Gramm.
3. Children and spouses names, Lynn Spearman McKenzie-Michael McKenzie (none), Charles M. Spearman-Jacinthe D. Spearman (none), Leonard H. O. Spearman, Jr. (none).

4. Parents names, Elvis W. and Tryphenia Spearman (none).

5. Grandparents names, Rosa Lawrence (deceased), Rawn Mitchell (deceased), Adell Spearman (deceased), Rose Spearman (deceased).

6. Brothers and spouses names, Elvis Ohara Spearman (deceased), Frankie Spearman (none), Rawn W. Spearman (none), Daisey L. Spearman (deceased).

7. Sisters and spouses names, Vivs T. Spearman Coleman-Hyron Coleman (none), Agenoria S. Paschal, Alonjo Paschal (none).

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DIXON (for himself, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. HEINZ, Mr. HELMS, and Mr. REID):

S. 3148. A bill to condition funding for coproduction with South Korea of the F/A-18 aircraft on receipt by Congress of the relevant Memorandum of Understanding (MOU) and to extend the 30-day congressional review period until the MOU is received; to the Committee on Foreign Relations.

By Mr. HOLLINGS:

S. 3149. A bill to amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fulidized based bed therapy in nursing facilities; to the Committee on Finance.

By Mr. PELL:

S. 3150. A bill to amend the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself, Mr. HEINZ, and Mr. PRYOR):

S. 3151. A bill to amend title II of the Social Security Act to provide for the entitlement of deemed spouses to benefits under such title despite the entitlement of a legal spouse, to waive the 2-year waiting period for entitlement to divorced spouse's benefits, and for other purposes; to the Committee on Finance.

By Mr. GORTON:

S. 3152. A bill to authorize the issuance of certificates of documentation for certain inflatable vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON:

S. 3153. A bill to assure equal justice for women in the courts; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mr. ROTH, Mr. BRADLEY, and Mr. LAUTENBERG):

S.J. Res. 373. Joint resolution granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for Mr. DOLE, (for himself, Mr. MITCHELL, Mr. HEINZ and Mr. SPECTER):

S. Res. 331. A resolution to congratulate Senator Hugh Scott on his 90th birthday; considered and agreed to.

By Mr. HEFLIN:

S. Res. 332. A resolution to refer S. 1301, entiteld "For the relief of Hoar Construction, Inc., of Birmingham, Alabama, to settle certain claims filed against the Small Business Administration" to the Chief Judge of the United States Claims Court for a report thereon; to the Committee on the Judiciary.

By Mr. ADAMS:

S. Con. Res. 149. Concurrent resolution to create a Congressional Leadership Group; to the Committee on Rules and Administration.

By Mr. FORD (for Mr. HARKIN):

S. Con. Res. 150. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 1824; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DIXON (for himself, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. HEINZ, Mr. HELMS and Mr. REID):

S. 3148. A bill to condition funding for coproduction with South Korea of the F/A-18 aircraft on receipt by Congress of the relevant memorandum of understanding [MOU] and to extend the 30-day congressional review period until the MOU is received; to the Committee on Foreign Relations.

CONDITIONS ON SALE OF AIRCRAFT TO KOREA

Mr. DIXON. Mr. President, the administration on Friday, September 7, 1990, sent official notification to the Senate that it had reached an agreement with the South Korean Government on the sale of F/A-18's to that country.

Just 2 weeks ago, I asked the State Department to provide me with a copy of the proposed memorandum of understanding and any relevant side letters of agreement. I was told "No." Word was relayed back that officials would brief me or my staff. We could ask questions, but we could not review the actual documents. I then placed a call to Mr. C. Boyden Gray, White House chief counsel, to request these documents—a simple request. As a Member of the Senate, I think I am entitled to a positive reponse. I made this simple request 10 days ago. I have yet to get any answer.

Mr. President, the Constitution of this great Nation in article 1, section 8, gives Congress the authority to "* * * regulate commerce with foreign nations * * *" South Korea may well be an important ally, but South Korea is still a foreign nation within the meaning of article 1, section 8, of our Constitution.

What we are being asked to do is to allow an agreement between the President of the United States and a foreign government to be approved without anybody elected to the Senate or the House of Representatives being permitted to look at the document.

The President only has the authority to enter into these agreements because Congress permits it. Congress, however, did not abandon its responsibilities. In the delegation of authority provided by the statute, Congress explicitly reserves for itself the right to overturn individual sales that Congress believes are unwise by enacting a joint resolution of disapproval. How can Congress intelligently exercise this power without seeing the terms of the proposed sales as outlined in the memoranda of understanding?

Mr. President, together with Senators BYRD, D'AMATO, FORD, HEINZ, HELMS, and REID, I am today introducing legislation designed to remind the administration of its duties under the law. It does not withdraw the President's authority to negotitate sales agreements. Instead, the bill merely requires the administration to give the Speaker of the House and the President pro tempore of the Senate the actual memorandum of understanding with South Korea, as well as any side letters of agreement. The bill also says that the 30-day period during which Congress has to consider the agreement will not begin until we have received these documents.

Mr. President, I simply want to conclude by saying this is the most remarkable experience I have ever had in public service. The law under the Arms Export Control Act says that those of us in the U.S. Senate and those of us in the Congress passed upon these memoranda of understanding and side agreements that our country enters into with foreign countries, and here is the administration saying to a U.S. Senate Member and other U.S. Senators that they will not let us see the memorandum of understanding and the accompanying papers.

How can any member of the U.S. Senate make an intelligent judgment call on whether it is a good MOU and a good contract without looking at it? I think it is remarkable. I am not passing upon the virtue of this instrument or the subjective or other parts of the agreement itself. I am simply saying we have a right to see this memorandum of understanding.

I yield the floor. I thank my colleagues.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL DOCUMENTS REQUIRED FOR PROPOSED COPRODUCTION OF F/A-18 AIRCRAFT.

(a) PROHIBITION.—None of the funds appropriated or otherwise made available by any provision of law shall be available for the export, or the licensing for export, of any items or technology to South Korea in connection with the coproduction of F/A-18 aircraft until at least 30 days after the Congress has received the proposed memorandum of understanding between South Korea and the United States regarding that coproduction and all documentation and background material, including agreements concluded through the exchange of letters, relating thereto.

(b) EXTENSION OF THE CONGRESSIONAL REVIEW PERIOD.—No Presidential certification under subsection (b), (c) or (d) of section 36 of the Arms Export Control Act with respect to the sale or export of items or technology for the coproduction of the F/A-18 aircraft with South Korea shall be deemed to have been received by the Congress until the President submits to the Congress the documents described in subsection (a).

By Mr. HOLLINGS:

S. 3149. A bill to amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fluidized bead bed therapy in nursing facilities; to the Committee on Finance.

MEDICARE COVERAGE OF AIR FLUIDIZED BEAD BED THERAPY IN NURSING HOMES

● Mr. HOLLINGS. Mr. President, today I am introducing legislation which would amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fluidized bead bed therapy in nursing facilities. Currently Medicare covers air fludizied bead bed therapy under part A for up to 100 days per spell of illness. My bill calls for placing all patients with medical necessity on air fluidized support beds until they are completely healed, with Medicare B picking up any treatment days not covered under part A.

As many of my colleagues are aware, pressure sores are one of the most devastating problems facing the health care industry from both a patient recovery and financial perspective—an annual estimated cost of $2 to $7 billion. Nursing home patients comprise the largest group for developing pressure sores. All too often, when the covered period expires, a patient is removed from an air fluidized bead bed without due consideration of medical condition or excess costs. Replacement beds are not adequate to completely heal pressure sores, resulting in complications such as sepsis, osteomyelitis, protein loss, and exacerbation of certain co-existing conditions. And, unnecessary costs are incurred when the patient's condition escalates to the point that hospitalization is required and Medicare must pay the higher costs of an acute care facility.

The total estimated cost for curing a single stage 4 pressure ulcer is between $30,000 and $40,000. With the part B coverage for air fluidized bead beds, the treatment costs for patients with pressure sores would decrease substantially because the beds allow them to heal completely and reduce the amount spent on existing sores. Also, the coverage would reduce complications associated with pressure sores because patients would be placed on products that would deter further skin breakdown reducing the worsening of existing sores.

Mr. President, because I am convinced that expansion of air fluidized bead bed therapy is cost effective, my bill also requires that the Secretary of Health and Human Services monitor the impact of total Medicare expenditures of the addition of the air fluidized bead bed therapy furnished to patients in nursing facilities. It is estimated that utilization of this appropriate therapy would reduce the cost of pressure sores in hospitals 36 percent to approximately $7,104—a 10.4 percent reduction in length-of-stay costs alone. The cost reduction will be even more substantial in skilled nursing care facilities where costs are usually less.

The current program of not healing the sores and allowing them to worsen results in astronomical treatment costs in both nursing and hospital settings. Earlier intervention and complete healing of pressure sores will reduce suffering and decrease the cost to the patient and to the Medicare Program.

Mr. President, there simply is no need to continue to spend enormous amounts of money on pressure sores in nursing facilities when this simple change in the law could save us money. I urge my colleagues to lend their full support to my measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEDICARE PART B COVERAGE OF AIR FLUIDIZED BEAD BED THERAPY IN NURSING FACILITIES TO TREAT PRESSURE SORES.

(a) IN GENERAL.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395(s)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting "; and"; and

(3) by inserting after paragraph (16) the following new paragraph:

"(17) air fluidized bead bed therapy, in accordance with utilization guidelines to be developed by the Secretary, furnished in a nursing facility.".

(b) MONITORING OF COST OF BENEFIT.—The Secretary of Health and Human Services shall study and monitor the impact on total medicare expenditures of the cost of coverage under title XVIII of the Social Security Act of air fluidized bead bed therapy furnished to individuals in nursing facilities.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to items and services furnished on or after January 1, 1991.●

By Mr. PELL:

S. 3150. A bill to amend the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

AMENDMENTS TO FEDERAL SHIP MORTGAGE INSURANCE PROGRAM

● Mr. PELL. Mr. President, today I am introducing legislation designed to help the fishing industry through some very difficult times.

When I look at the problems faced by Rhode Island fishermen, it seems to me as if life itself is conspiring against them. Lately, there seems to be nothing but bad news those who make their living at fishing.

The credit crunch. New England is in the midst of a serious economic downturn and these bad times have all but dried up the credit available to fishermen for vessel operation.

The crisis in the Middle East. Events far away from Narragansett Bay have driven the price of energy through the roof and this increase is a significant and unexpected financial burden for fishermen.

Foreign competition. Aggressive or unsound fishing practices employed by foreign-based fishermen are challenging the competitiveness of our domestic fishing industry and this challenge may force some fishermen out of business.

Depleted fishing stocks. Over-fishing of popular fishing stocks along with a lack of expertise in the marketing of underutilized species have hit fisherman hard and placed the future viability of the industry in grave doubt.

All of these forces are working against Rhode Island fishermen. The fishermen are trying to meet these challenges by working longer hours, fixing their boats by themselves, and setting out to sea on days when conditions are potentially hazardous.

There are many ways those of us in Congress can help our fishermen. This week, I received an outstanding suggestion for a good place to start.

The Rhode Island Fisheries Preservation Alliance has asked me to introduce legislation that will change the Federal Ship Mortgage Insurance Program to better meet the needs of fishermen in the 1990's and beyond. I am proud to introduce that legislation here today.

The Federal Ship Mortgage Insurance Program Act Amendments of 1990 will address perhaps the most pressing need of Rhode Island fishermen, the unavailability of credit.

Under this act, the Federal Government will back loans made to fishermen for general working capital needs.

In the current program, loans are only backed if they are for the construction, reconstruction, or reconditioning of fishing vessels.

The legislation I am introducing today would expand the Federal Ship Mortgage Insurance Program to cover loans made for the equipping, maintaining, repairing, or operating a fishing vessel.

In closing, I should emphasize that this new legislation was developed by a group of Rhode Islanders that have made an effort to change the fishing industry for the better. The Rhode Island Fisheries Preservation Alliance was recently formed to bring about real solutions to the problems facing the fishing industry.

The Federal Ship Mortgage Insurance Program Act Amendments of 1990 is a tribute to the perseverance of the men and women that make up this group, including its chairman, Rhode Island State Senator William O'Neill, Mr. Fred Benson, Mr. Norbert Stamps, Mr. John Kilcommons, and Mr. John Kennedy.

Mr. President, as introduced, this is good legislation, but I am open to suggestions for further improvement. For example, it may be desirable to increase the guarantee fee for fishery loans under this program because the risks involved may be somewhat greater than in the existing program. In addition, the Rhode Island Fisheries Preservation Alliance has explicitly recognized that one of the problems confronting the industry is overcapitalization. If safeguards in addition to those already in the program are required to assure that these loan guarantees do not add to the overcapitalization problem, then those additional provisions can be added.●

By Mr. RIEGLE (for himself, Mr. HEINZ, and Mr. PRYOR):

S. 3151. A bill to amend title II of the Social Security Act to provide for the entitlement of deemed spouses to benefits under such title despite the entitlement of a legal spouse, to waive the 2-year waiting period for entitlement to divorced spouse's benefits, and for other purposes; to the Committee on Finance.

ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE

● Mr. RIEGLE. Mr. President, today I am introducing with my distinguished colleagues, Senators HEINZ and PRYOR, a bill that would remedy an injustice that deprives widows and widowers of Social Security benefits—benefits that they may need to survive. Most often affecting widows rather than widowers, current law denies the benefits of a deceased worker to a widow if the deceased worker had a preexisiting common law marriage that was not terminated and the wife from that marriage, the legal wife, applies for dependent benefits on the deceased worker's record. This is true even if the widow had no knowledge of this prior marriage.

These widows, in good faith, believed that they were legally married and relied upon the fact that when they become old, they would be eligible for benefits on their husband's records. As it stands, many of these women have little or no income. Despite long relationships with men they believed to legally be their husbands, they are left without any Social Security coverage when their husband dies. This bill would restore benefits to good faith wives even if the legal wife receives benefits. It would also waive the 2-year waiting period after a divorce for divorced spouses who are eligible for dependent spouse benefits and would continue disability benefits during appeal.

I became painfully aware of the dilemma of good faith wives when Lillian Snowden, a Michigan resident, contacted my regional office. At that time, she requested my assistance regarding entitlement to Social Security widow's benefits on the record of her deceased husband, Mr. Jack Snowden.

Lillian married Jack Snowden ceremonially on November 6, 1950. She remained entirely committed and fully dependent upon Jack for 31 years until his death in 1981. After Jack died, Lillian, who was listed as Jack's wife in his application for retirement benefits, became entitled to widows benefits. For 2½ years, Lillian received the benefits she needed and deserved. The payments enabled her to sustain herself.

In March 1984, Mrs. Snowden received notice from the Social Security Administration that she was no longer entitled to benefits because a woman who had lived with Mr. Snowden for 10 years prior to his meeting Lillian, had applied for widow's benefits. Their relationship was considered a common law marriage and was determined to have remained in effect until Mr. Snowden's death. Therefore, Lillian Snowden's marriage to Jack was deemed invalid, leaving Lillian, who was not responsible, nor aware of this problem, without any survivor's benefits. Jack's previous, common law wife had not lived with him since before 1950 but remains the sole beneficiary of his survivor's insurance.

My office contacted the Social Security Administration immediately to verify the information that Lillian received and was told that the decision to revoke Lillian's benefits was correct and in accordance with their rules and regulations. In addition, they would not even consider a waiver of the divorce requirement. Despite many phone calls, the decision to revoke Lillian's benefits stood.

Mr. President, today Lillian Snowden receives only $281 in SSI benefits per month. Obviously, this is not enough for anyone to make ends meet. To resolve this situation, I am introducing this legislation, to amend title II of the Social Security Act to provide benefits to a widow or widower who in good faith married unaware that their marriage was invalid and who lost their entitlement to benefits because another entitled spouse claimed those benefits.

The plight of Lillian Snowden is tragic, but not unique. Indeed, there are many in this Nation who would benefit from the correction of this injustice. To continue to adhere to the promises of Social Security and to the ideals it professes, we must correct these inequities.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD immediately following my remarks.

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

S. 3151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE.—Section 216(h)(1) of the Social Security Act (42 U.S.C. 416(h)(1)) is amended—

(1) in subparagraph (A)—

(A) by inserting "(i)" after "(h)(1)(A)"; and

(B) by striking "If such courts" in the second sentence and inserting the following:

"(ii) If such courts"; and

(2) in subparagraph (B)—

(A) by inserting "(i)" after "(B)";

(B) by striking "The provisions of the preceding sentence" in the second sentence and inserting the following:

"(ii) The provisions of clause (i)";

(C) by striking "(i) if another" in the second sentence and all that follows through "or (ii)";

(D) by striking "The entitlement" in the third sentence and inserting the following:

"(iii) The entitlement";

(E) by striking "subsection (b), (c), (e), (f), or (g)" in the third sentence and inserting "subsection (b) or (c)";

(F) by striking "wife, widow, husband, or widower" the first place it appears in the third sentence and inserting "wife or husband";

(G) by striking "(i) in which" in the third sentence and all that follows through "in which such applicant entered" and inserting "in which such person enters";

(H) by striking "For purposes" in the fourth sentence and inserting the following:

"(iv) For purposes";

and

(I) by striking "(i) and "(ii)" in the fourth sentence and inserting "(I)" and "(II)", respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE.—Section 216(h)(1)(B)(i) of such Act (as amended by subsection (a)) if further amended—

(1) by striking "where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual" and inserting "where under sub-

section (b), (c), (d), (f), or (g) such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual";

(2) by striking "and such applicant" and all that follows through "files the application,";

(3) by striking "subsections (b), (c), (f), and (g)" and inserting "subsections (b), (c), (d), (f), and (g)"; and

(4) by adding at the end the following new sentences: "Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.".

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM.—Section 203(a)(3) of such Act (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) In any case in which—

"(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

"(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

"(iii) such entitlements are based on the wages and self-employment income of the same insured individual, the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.".

(d) CONFORMING AMENDMENT.—Section 203(a)(6) of such Act (42 U.S.C. 403(a)(6)) is amended by inserting "(3)(D)," after "(3)(C),".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) TERMINATED BENEFICIARIES AND DIVORCED DEEMED SPOUSES.—In the case of individuals whose benefits under title II of the Social Security Act have been terminated under section 216(h)(1)(B) of such Act before January 1, 1991, or who would be entitled to benefits under such title for any month after December 1990 as a divorced spouse or surviving divorced spouse solely by reason of the amendments made by this section, the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

SEC. 2. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK.—Section 203(b)(2) of the Social Security Act (42 U.S.C. 403(b)(2)) is amended—

(1) by striking "(2) When" and all that follows through "2 years, the benefit" and inserting the following:

"(2)(A) Except as provided in subparagraph (B), in any case in which—

"(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202 (b) or (c) for any month, and

"(ii) such person has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new subparagraph:

"(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.".

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES.—Section 203(d)(1)(B) of such Act (42 U.S.C. 403(d)(1)(B)) is amended—

(1) by striking "(B) When" and all that follows through "2 years, the benefit" and inserting the following:

"(B)(i) Except as provided in clause (ii), in any case in which—

"(I) a divorced spouse in entitled to monthly benefits under section 202 (b) or (c) for any month, and

"(II) such divorced spouse has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new clause:

"(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagrph (A) became entitled to such benefits before the date of the divorce.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

SEC. 3. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1)(i), by inserting "or" after "hearing,", and by striking "pending, or (iii) June 1990." and inserting "pending."; and

(2) by striking paragraph (3)●

By Mr. GORTON:

S. 3152. A bill to authorize the issuance of certificates of documentation for certain inflatable vessels; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF CERTAIN INFLATABLE VESSELS

● Mr. GORTON. Mr. President, the bill I am introducing today would provide for a Jones Act exemption for certain small inflatable boats known as Zodiacs which are used by Wilderness Cruise Lines of Seattle, WA.

Wilderness Cruise Lines operates passenger cruise ships from Seattle to Alaska or off the coast of Baja, CA. Zodiacs are used to carry passengers from the cruise ships for sightseeing trips near or on the shore. Each Zodiac can carry up to 15 people and costs approximately $11,000.

The U.S. Coast Guard has recently labeled the use of the Zodiacs as coastwise trade. As the boats are manufactured in Canada, they do not qualify for the needed documentation to obtain a coastwise license. I am therefore introducing a bill to allow these vessels to obtain the necessary documentation.

I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

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

S. 3152

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue certificates of documentation for eight inflatable vessels identified, respectively, as follows:

(1) Serial number 3968B, model number J990.

(2) Serial number 4581B, model number J990.

(3) Serial number A501A, model number D989.

(4) Serial number A502A, model number D989.

(5) Serial number 6291C, model number G091.

(6) Serial number 6300C, model number G091.

(7) Serial number 7302C, model number G091.

(8) Serial number 7305C, model number G091.●

By Mr. SIMON:

S. 3153. A bill to assure equal justice for women in the courts; to the Committee on the Judiciary.

EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT

● Mr. SIMON. Mr. President, I rise today to introduce the Equal Justice for Women in the Courts Act of 1990. This bill will address one of the remaining barriers to equal justice in our States and Federal judicial proceedings—gender bias by judges and supporting personnel.

The Equal Justice for Women in the Courts Act would authorize funds for the State Justice Institute and the Federal Judicial Center for use in the development and dissemination of model programs designed to train judges and their personnel on rape laws, sexual assault, domestic violence and other gender-motivated crimes.

Training would include such topics as the physical, economic, and psychological effects of rape and domestic violence on the victim and their costs on society; statistics on the nature and in-

cidence of domestic violence; and the application of rape shield laws and other limits on the introduction of evidence in court. Both the State and the Federal model programs would be developed with the assistance of law enforcement officials, victim's advocates, prosecutors, defense attorneys, and legal and social science experts.

The Federal Courts Study Committee report released in April recognized the crucial need for the type of judicial education and training this bill will provide. The Study Committee noted that studies of many State systems reflect the presence of gender bias in State judicial proceedings. The committee concluded, "[w]e believe education is the best means of sensitizing judges and supporting personnel to their own possible inappropriate conduct and to the importance of curbing such bias when shown by attorneys, parties, and witnesses."

Two years ago, the Illinois State Bar Association, the Illinois Women's Bar Association, and the Chicago Bar Association established the Task Force to Study Gender Bias in the Courts. The task force recently released its exhaustive study of the manifestations of gender bias in domestic relations cases, criminal cases, civil damage awards, and courtroom dynamics in the Illinois system. The report related such specific instances of bias as a judge's comments in a case where a husband engaged in an automobile chase of his estranged wife and her companion. The woman and her companion were killed in the chase. As he sentenced the defendant to probation, the presiding judge stated, "[t]his was no drunken idiot trying to run someone off the road. This was a sober man trying to reclaim his wife."

But this is just one of many examples of blatant gender bias uncovered by the task force. The report catalogs other, far more subtle, instances of bias throughout the justice system and strongly recommends judicial education as an important component in any effort to eliminate such bias.

I too believe that educational training for State and Federal judges on the issues of sexual assault, spousal abuse, and domestic violence is extremely important and necessary in order for judges and court personnel to have a clear sense of the traumatic effects of such crimes on the victims.

The Equal Justice for Women in the Courts Act builds on landmark legislation introduced by Senator BIDEN in April. That bill, S. 2754, the Violence Against Women Act, is a comprehensive measure designed to make our Nation's streets, homes, and college and university campuses safer for women. The bill increases the penalties for sexual assault and creates grants to States to train police and prosecuters. Senator BIDEN's bill also grants interstate enforcement of protective orders and creates a civil rights remedy for victims of sexual assault. This bill has been the subject of extensive hearings in the Judiciary Committee and I am proud to count myself among its bipartisan cosponsors.

Mr. President, statistics compiled by the Judiciary Committee reveal that in 1989, more women were abused by their husbands than the number of women who got married. and since 1974, the rate of assaults against young women age 20-24 has risen 48 percent. In that same period of time assaults against young men age 20-24 dropped 12 percent. In my home State of Illinois, the rate of sexual assaults has risen roughly 18 percent since 1986.

Yet rape is the most underreported of all major crimes—it is believed that only about 7 percent of all rapes are reported to police. One of the reasons they go unreported is the perceived, and often actual, insensitivity of law enforcement officers and officers of the court to the victims of crimes of this nature.

The bill I introduce today will provide meaningful protection of the rights of those who are victimized by sex crimes and other gender-motivated crimes. When the Judiciary Committee considers S. 2754, I intend to offer the Equal Justice for Women in the Courts Act as an amendment. The Equal Justice for Women in the Courts Act will take us all one step closer to realizing equal justice under the law.

Mr. President, I commend this bill to my colleagues and invite their cosponsorship and support.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

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

S. 3153

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Equal Justice for Women in the Courts Act of 1990".

TITLE I—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

SEC. 101. GRANTS AUTHORIZED.

The Attorney General shall make grants through the State Justice Institute for the purpose of developing, testing, presenting, and disseminating model programs to be used by States in training judges and court personnel in the laws of the States on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

SEC. 102. TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this title may include—

(1) current data on the nature and incidence of rape and sexual assault by strangers and non-strangers, marital rape, and incest;

(2) current data on the undereporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of law and attitudes of rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that subjects victims to improper sex stereotyping and harrassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant and the inappropriateness of holding such victims in contempt of court;

(10) current data on the nature and incidence of domestic violence;

(11) the physical, psychological, and economic impact of domestic violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' failure to report domestic violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel; and

(18) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims.

SEC. 103. COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE.

The Attorney General shall ensure that model programs carried out pursuant to grants made under this title are developed in conjunction with, and with the participation of, law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the

courts drawn from the legal and social science professions.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1991, $600,000 to carry out the purposes of this title. Of amounts appropriated under this section, the State Justice Institute shall expend no less than 40 percent on model programs regarding domestic violence and no less than 40 percent on model programs regarding rape and sexual assault.

TITLE II—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

SEC. 201. EDUCATION AND TRAINING GRANTS.

(a) STUDY.—The Federal Judicial Center shall conduct a study of the nature and extent of gender bias in the Federal courts, including in proceedings involving rape, sexual assault, domestic violence, and other crimes of violence motivated by gender. The study shall be conducted by the use data collection techniques such as reviews of trail and appellate opinions and transcripts, public hearings and inquiries to attorneys practicing in the Federal courts. The Federal Judicial Center shall publicly issue a final report containing a detailed description of the findings and conclusions of the study, including such recommendations for legislative, administrative, and judicial action as it considers appropriate.

(b) MODEL PROGRAMS.—(1) The Federal Judicial Center shall develop, test, present, and disseminate model programs to be used in training Federal judges and court personnel in the laws on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

(2) The training programs developed under this subsection shall include—

(A) all of the topics listed in section 102 of title I; and

(B) all procedural and substantive aspects of the legal rights and remedies, for violent crime motivated by gender including such areas as the Federal penalties for sex crimes, interstate enforcement of laws against domestic violence and civil rights remedies for violent crimes motivated by gender.

SEC. 203. COOPERATION IN DEVELOPING PROGRAMS.

In implementing this title, the Federal Judicial Center shall ensure that the study and model programs are developed in conjunction with, and with the participation of, law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts drawn from the legal and social science professions.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1991, $400,000 to carry out the purposes of this title. Of amounts appropriated under this section, no less than 25 percent and no more than 40 percent shall be expended by the Federal Judicial Center on the study required by section 201(a) of this title.●

By Mr. BIDEN (for himself, Mr. ROTH, Mr. BRADLEY, and Mr. LAUTENBERG):

S.J. Res. 373. Joint resolution granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes; to the Committee on the Judiciary.

CONSENT OF CONGRESS TO AMENDMENT TO THE DELAWARE-NEW JERSEY COMPACT.

● Mr. BIDEN. Mr. President, I am joined by Senators ROTH, BRADLEY, and LAUTENBERG in introducing legislation to grant congressional consent to amendments to an interstate compact between Delaware and New Jersey. The amendments, which have been passed by both State legislatures, allow the Delaware River and Bay Authority to engage in economic development activity.

The original compact was consented to in 1962. Allowing an interstate authority of this type to engage in economic development is fairly common. In fact, New Jersey already has similar arrangements with interstate authorities it has established with her two other neighbors, Pennsylvania and New York.

The compact explicitly requires that environmental concerns be met before proceeding with any economic development activities. Delaware has long supported strong protective measures for the State's coastline. In approving the compact, Delawareans made sure that the authority would have to comply with strict environmental standards. In fact, steps that will improve environmental conditions in the Delaware River and Bay are specifically listed as qualifying economic development projects.

The compact amendments enjoyed strong bipartisan support in the Delaware and New Jersey legislatures. I hope that Congress will be able to grant its consent to the compact changes before the end of the session.

I ask that a copy of the joint resolution consenting to the compact be printed in the RECORD.

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

S.J. RES. 373

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and Public Law 1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, have provided subject to the consent of Congress, for an amendment to the Delaware-New Jersey Compact to authorize the Delaware River and Bay Authority to undertake economic development projects, other than major projects, at its own initiative, and to undertake major projects after securing only such approvals as may be required by the legislation of the State in which the project is to be located, except the Authority is prohibited from undertaking any major project to be located in the Delaware River and Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS.

The Congress consents to the amendments to the Delaware-New Jersey Compact which have been enacted by the States of Delaware and New Jersey, so that the Delaware-New Jersey Compact reads substantially as follows:

"DELAWARE-NEW JERSEY COMPACT

"Whereas the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

"Whereas the pressures of existing trends from increasing traffic, growing population, and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic development and to improve crossings, transportation, terminal, and other facilities of the area; and

"Whereas the financing, construction, operation and maintenance of such crossings, transportation, terminal, and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

"Whereas the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. §1701) and Public Law 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Public Law 87-678, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation, and maintenance of crossings, transportation, or terminal facilities and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

"Whereas the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

"Whereas the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applica-

ble environmental protection laws and regulations before the Authority may undertake the planning, development, construction, or operation of any project, other than a crossing:

"Now, Therefore, the State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

"ARTICLE I

"SHORT TITLE

"This Compact shall be known as the 'Delaware-New Jersey Compact'.

"ARTICLE II

"DEFINITIONS

" 'Crossing' means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry, or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and services routes and all appurtenances and equipment relating thereto.

" 'Transportation facility' and 'terminal facility' means any structure or facility other than a crossing, as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

" 'Commerce facility or development' means any structure or facility adapted for public use or any development for a public purpose within each of the States party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and other facilities of commerce which, in the judgment of the Authority, are required for the sound economic development of the area.

" 'Appurtenances' and 'Equipment' mean all works, buildings, structures, devices, appliances, and supplies, as well as every kind of mechanism, arrangement, object, or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement, and operation of any crossing, transportation facility or terminal facility, or commerce facility, or development.

" 'Project' means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance, and improvement thereof.

" 'Major Project' means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Cloucester, and Salem, as determined in accordance with State law by the environmental agency of the State in which the major project is to be located.

" 'Tunnel' means a tunnel of one or more tubes.

" 'Governor' means any person authorized by the Constitution and law of each State to exercise the functions, powers, and duties of that office.

" 'Authority' means the Authority created by this Compact or any agency successor thereto.

"The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

"ARTICLE III

"FAITHFUL COOPERATION

"They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance, and improvement of all projects entrusted to the authority created by this Compact.

"ARTICLE IV

"ESTABLISHMENT OF AGENCY; PURPOSES

"The two States agree that there shall be created and they do hereby create a body politic, to be known as 'The Delaware River and Bay Authority' (for brevity hereinafter referred to as the 'Authority'), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

"(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jerey; and

"(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

"(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

"(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

"The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

"The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two States expressly in implementation thereof.

"The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the State in which the major project is to be located. Each State shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

"ARTICLE V

"COMMISSIONERS

"The Authority shall consist of twelve Commissioners, six of whom shall be residents of and qualified to vote in and shall be appointed from the State of Delaware, and six of whom shall be residents of and qualified to vote in and shall be appointed from the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of at least one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

"Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

"ARTICLE VI

"BOARD ACTION

"The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least four Commissioners from each State are present, and unless at least four Commissioners from each State shall vote in favor thereof. The vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes and for notification of the action thereon.

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"ARTICLE VII

"GENERAL POWERS

"For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To adopt and use an official seal.

"(c) To elect a chairman and a vice chairman from among the Commissioners. The chairman and vice chairman shall be elected from different States and shall each hold office for two years. The chairmanship and vice chairmanship shall be alternated between the two States.

"(d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties, and functions, but no bylaw or rule, regulation, or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations, and orders respecting the use of any crossing, transportation, or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropriate officials of both States in order to insure, as far as possible, uniformity of such rules, regulations, and orders with the laws of both States.

"(e) To appoint or employ such other officers, agents, attorneys, engineers, and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

"(f) To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm, or corporation deemed necessary or advisable for the exercise of its purposes and powers.

"(g) To accept from any government or governmental department, agency, or other public or private body, or from any other source, grants, or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

"(h) To acquire (by gift, purchase, or condemnation), own, hire, lease, use, operate, and dispose of property, whether real, personal, or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility, or other project owned by another and which the Authority is authorized to own and operate.

"(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

"(j) To borrow money and to evidence such loans by bonds, notes, or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

"(k) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents, or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

"(l) To grant the use of by franchise, lease, or otherwise, and to make charges for the use of any crossing, facility, or other project or property owned or controlled by it.

"(m) To exercise the right of eminent domain to acquire any property or interest therein.

"(n) To determine the exact location, system, and character of and all other matters in connection with any and all crossings, transportation, or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(o) To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE VIII

"ADDITIONAL POWERS

"For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

"ARTICLE IX

"EMINENT DOMAIN

"If the Authority shall find and determine that any property or interest therein is requried for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either State, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the State in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

"In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction, and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect thereto as the State agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States with respect to the enactment, repeal, or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

"If the established grade of any street, avenue, highway, or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway, or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

"The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

"ARTICLE X

"REVENUE AND APPLICATION

"The Authority is hereby authorized to establish, levy, and collect such tolls and other charges as it may deem necessary, proper, or desirable in connection with any crossing, transportation, or terminal facility, commerce facility or development or other project which it is or may be authorized at any time to construct, own, operate, or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization, and retirement of bonds or other securities or obligations assumed, issued, or incurred by the Authority, together with interest thereon, and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumbed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance, and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem property chargeable thereto.

"ARTICLE XI

"COVENANT WITH BONDHOLDERS

"The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued, or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation, or terminal facility, commerce facility or development or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish, or impair the power of the Authority to establish, levy, and collect tolls

and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligation.

"ARTICLE XII

"SECURITIES LAWFUL INVESTMENTS

"The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

"ARTICLE XIII

"TAX STATUS

"The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and Nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

"ARTICLE XIV

"JURISDICTION; USE OF LANDS

"Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation, or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, or operate, including lands lying under water.

"ARTICLE XV

"REVIEW AND ENFORCEMENT OF RULES

"Judicial proceedings to review any bylaw, rule, regulation, order, or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each State, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

"Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation, or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

"ARTICLE XVI

"NO PLEDGE OF CREDIT

"The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey or of any other agency or of any political subdivision of said States.

"ARTICLE XVII

"LOCAL COOPERATION AND AGREEMENTS

"(a) All municipalities, political subdivisions, and every department, agency, or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

"(b) The Authority is authorized and empowered to cooperate with each of the States, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the State in which the project is to be located, with each of the States, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority, or commission or with two or more of them, for or relating to such purposes.

"(c) The Authority and the city, town, municipality, or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowers, subject to compliance with the laws of the State in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules, and regulations, if any, of the city, town, municipality, or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

"ARTICLE XVIII

"DEPOSITARIES

"All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

"ARTICLE XIX

"AGENCY POLICE

"Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated, or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention, and arrest conferred by law on peace officers, sheriffs, or constables in such State or usually exercised by such officers in each State.

"ARTICLE XX

"REPORTS AND AUDITS

"The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

"It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

"It shall furnish such information or data with respect to its affairs as may be requrested by the Governor or Legislature of each State.

"ARTICLE XXI

"BOUNDARIES UNAFFECTED

"The existing territorial or boundary lines of the States or the jurisdiction of the two States established by said boundary lines shall not be changed hereby.

"ARTICLE XXII

"ENVIRONMENTAL PROTECTION

"(a) The planning, development, construction, and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resources laws, now or hereinafter enacted, or promulgated by the State in which the project, or any part thereof, is located.

"(b) The planning, development, construction, and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetland laws, subaqueous land laws or natural resource laws now or hereinafter enacted or promulgated by either State.

"(c) The planning, development, construction, and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures, and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code,

as in effect on January 1, 1989. Nothing in this Compact shall be deemed to pre-empt, modify, or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

"(d) The planning, development, construction, and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq.".

SEC. 2. FEDERAL JURISDICTION NOT AFFECTED.

Nothing contained in the compact set forth in section 1 shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

SEC. 3. AUTHORITY FOR ADDITIONAL TOLL BRIDGES.

Section 4 of the Act entitled "An Act to authorize the State of Delaware, by and through its State highway department, to construct, maintain, and operate a toll bridge across the Delaware River near Wilmington, Delaware" approved July 13, 1946 (60 Stat 533), as amended by the Act of June 27, 1951 (66 Stat. 91) and the Act of October 3, 1962 (76 Stat. 741-742), is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and", and

(3) by adding after paragraph (4) the following:

"(5) to pay the cost of any project which the Delaware River and Bay Authority is or may be authorized to construct, own, operate, or control, under the Delaware-New Jersey Compact, as consented to by the Congress,".

SEC. 4. REQUIREMENTS OF OTHER LAWS.

In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in and over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fishing and Wildlife Coordination Act (16 U.S.C. 662(a)).

SEC. 5. CONSTRUCTION.

Nothing in this resolution shall be construed as—

(1) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688); or

(2) granting advance consent of Congress for the performance by the Delaware River and Bay Authority of other functions, as contemplated by Article IV, paragraph (d) of the compact set forth in section 1 or for the assumption by the Authority of additional powers, as contemplated by Article VII of such compact.

SEC. 6. DISCLOSURE OF INFORMATION.

The right is reserved to the Congress or any of its standing committees to require of the Delaware River and Bay Authority the disclosure and furnishing of such information and data as it is deemed appropriate by the Congress or any committee thereof having jurisdiction of the subject matter of this resolution.

SEC. 7. RESERVATION BY THE CONGRESS.

The right to alter, amend, or repeal this joint resolution is expressly reserved.●

● Mr. ROTH. Mr. President, I am pleased to rise today and to join my colleagues Senator BIDEN, Senator BRADLEY, and Senator LAUTENBERG in introducing legislation that amends the Delaware and New Jersey compact which created the Delaware River and Bay Authority. The compact was created to advance the economic growth and development in those areas of both States which border the Delaware River and Bay. The compact, which has been unchanged since 1963, currently empowers the Delaware River and Bay Authority to finance and develop crossings, transportation or terminal facilities in both New Jersey and Delaware. The compact was created by the U.S. Congress by joint resolution, Public Law 87-678, on September 20, 1962.

This year after extensive public hearings, strong bipartisan support, and enactment of legislation by both the Delaware General Assembly and the New Jersey State Legislature, we are asking that the restrictions on the authority's ability to use its toll revenues be lifted. We are proposing that besides crossings other economic development projects may be undertaken by the authority. Of course, any such project shall be in complete compliance with all applicable environmental laws before the authority may undertake the development of the project.

For the compact amendment to become effective, the original joint resolution of Congress approving its creation must be amended by both bodies of the Congress. In the U.S. House of Representatives Mr. HUGHES has introduced House Joint Resolution 657 which would do just that. We are introducing the identical legislation in the Senate today. I urge my colleagues to join us in supporting this legislation.●

ADDITIONAL COSPONSORS

S. 52

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 52, a bill to amend section 1086 of title 10, United States Code, to provide for payment under the CHAMPUS Program of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes.

S. 730

At the request of Mr. COATS, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 730, a bill to request the President to award gold medals on behalf of Congress to Frank Capra, James M. Stewart, and Fred Zinnemann, and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 731

At the request of Mr. COATS, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 731, a bill to request the President to award a gold medal on behalf of Congress to Robert Wise and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 1400

At the request of Mr. KASTEN, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1400, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 1661

At the request of Mr. PRYOR, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1661, a bill to amend the Internal Revenue Code of 1986 to provide for a tax credit for qualifying disability expenses.

S. 1808

At the request of Mr. BREAUX, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1808, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 1815

At the request of Mr. BOSCHWITZ, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 1815, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer Social Security taxes on cash tips.

S. 2754

At the request of Mr. BIDEN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 2754, a bill to combat violence and crimes against women on the streets and in homes.

S. 2767

At the request of Mr. MCCAIN, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 2767, a bill to provide for retention of certain Medicare catastrophic benefits provided by health maintenance organization.

S. 2796

At the request of Mr. COHEN, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2796, a bill to amend title IV of the Higher Education Act of 1965 to allow resident physicians to defer repayment of their title IV student loans while completing a resident training program accredited by the Accredita-

tion Council for Graduate Medical Education or the Accrediting Committee of the American Osteopathic Association.

S. 2898

At the request of Mr. HARKIN, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from California [Mr. WILSON], the Senator from Michigan [Mr. LEVIN], the Senator from North Dakota [Mr. CONRAD], the Senator from Alabama [Mr. SHELBY], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2898, a bill to improve counseling services for elementary schoolchildren.

S. 2925

At the request of Mr. DIXON, the names of the Senator from Iowa [Mr. HARKIN], the Senator from West Virginia [Mr. BYRD], the Senator from Michigan [Mr. RIEGLE], the Senator from California [Mr. CRANSTON], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 2925, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the discovery of America and to authorize the payment of the proceeds of the sale of such coins to the Christopher Columbus Quincentenary Scholarship Foundation for the purpose of establishing a scholarship program, and for other purposes.

S. 2959

At the request of Mr. BAUCUS, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Nebraska [Mr. KERREY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Arkansas [Mr. BUMPERS], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 2959, a bill to amend the Railroad Retirement Solvency Act of 1983 to extend for 2 years the transfer to the Railroad Retirement Account of income tax revenues from tier 2 benefits.

S. 2979

At the request of Mr. MITCHELL, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2979, a bill to protect the public from health risks from radiation exposure from low-level radioactive waste, and for other purposes.

S. 2989

At the request of Mr. HEINZ, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2989, a bill to amend title XIX of the Social Security Act to provide for an expansion of Medicaid benefits to low-income pregnant women and children, and to raise the tax on cigarettes to fund such Medicaid expansion.

At the request of Mr. HEINZ, the name of the Senator from Alabama [Mr. SHELBY] was withdrawn as a cosponsor of S. 2989, supra.

S. 3076

At the request of Mr. PRYOR, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 3076, a bill to provide for permanent extensions of expiring health-related waiver of liability provisions.

S. 3136

At the request of Mr. BURNS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 3136, a bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to limit increases in outlays to 4 percent per year, to provide for midyear sequesters in order to assure that deficit and outlay targets are achieved, and to amend the Congressional Budget Act of 1974 to extend the deficit targets.

SENATE JOINT RESOLUTION 351

At the request of Mr. BYRD, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Joint Resolution 351, a joint resolution to designate the month of May 1991, as "National Trauma Awareness Month."

SENATE JOINT RESOLUTION 363

At the request of Mr. RIEGLE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 363, a joint resolution to designate the week of October 22 through October 28, 1990, as the "International Parental Child Abduction Awareness Week."

SENATE JOINT RESOLUTION 371

At the request of Mr. PRYOR, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 371, a joint resolution to recognize the week of October 1-7, as "National Nursing Home Residents' Rights Week."

SENATE CONCURRENT RESOLUTION 149—CREATING A CONGRESSIONAL LEADERSHIP GROUP

Mr. ADAMS submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 149

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. CONGRESSIONAL LEADERSHIP GROUP.

(a) ESTABLISHMENT.—To facilitate congressional deliberation and Executive-Legislative consultation on critical decisions relating to United States participation in collective security actions pursuant to this Resolution, there shall be established in each House of Congress, as an exercise of the rulemaking authority of that House, a Leadership Group which shall be comprised as follows:

(1) in the House of Representatives—

(A) the Speaker, who shall serve as chairman;

(B) the Majority and Minority Leaders;

(C) the chairmen and ranking members of the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence;

(D) such other members as the chairman of the Group may designate; and

(2) in the Senate—

(A) the Majority Leader, who shall serve as chairman;

(B) the President pro tempore and the Minority Leader;

(C) the chairmen and ranking members of the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence; and

(D) such other members as the chairman of the Group may designate.

(b) COMBINED CONGRESSIONAL LEADERSHIP GROUP.—When the chairmen of the two groups deem it appropriate and practical for purposes of congressional deliberation or Executive-Legislative consultation, they shall arrange for the two Groups to assemble as a Combined Congressional Leadership Group, on which the two chairmen shall act as cochairmen.

(c) CONSULTATION REGARDING THE USE OF FORCE.—The President shall, unless urgent circumstances do not permit, consult and seek the advice of the Congressional Leadership Groups or the Combined Congressional Leadership Group designated pursuant to this section, prior to committing United States Armed Forces to hostilities in the Persian Gulf region.

SENATE CONCURRENT RESOLUTION 150—AUTHORIZING CORRECTIONS IN THE ENROLLMENT OF S. 1824

Mr. FORD (for Mr. HARKIN) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 150

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 1824), an Act to reauthorize the Education of the Handicapped Act, and for other purposes, the Secretary of the Senate shall make the following correction:

(1) In the amendment made by section 405, strike out "631(a)(6)" each place that such occurs and insert in lieu thereof "631(1)(7)".

SENATE RESOLUTION 331—CONGRATULATING FORMER SENATOR HUGH SCOTT ON HIS 90TH BIRTHDAY

Mr. MITCHELL (for Mr. DOLE, for himself, Mr. MITCHELL, Mr. HEINZ, and Mr. SPECTER) submittted the following resolution; which was considered and agreed to:

S. RES. 331

Whereas Senator Hugh Scott of Pennsylvania, was the Senate Republican Leader for eight years, and

Whereas Senator Scott was the Senate Assistant Republican Leader for two years, and

Whereas Senator Scott was Chairman of the Republican National Committee 1948-49, and

Whereas Senator Scott was a Member of Congress for 33 years, including eight terms in the House of Representatives and three terms in the Senate, and

Whereas Senator Scott voluntarily retired at the end of his term in January 1977, and

Whereas Senator Scott served his country in the United States Naval Reserve in World War II, and saw duty aboard the carrier Valley Forge during the Korean war: Now, therefore, be it .

Resolved, That the Senate extends its best wishes to Senator Hugh Scott on his 90th birthday, November 11, 1990.

SENATE RESOLUTION 332—TO REFER THE BILL S. 1301 TO THE COURT OF CLAIMS

Mr. HEFLIN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 332

Resolved, That the bill S. 1301, entitled "For the relief of Hoar Construction, Inc., of Birmingham, Alabama, to settle certain claims filed against the Small Business Administration" now pending in the Senate, together will all the accompanying papers, is referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Codes, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusion thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimant from the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the full committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 9:30 a.m., Tuesday, October 2, 1990, for a hearing to receive testimony on the key elements of a national energy policy that can effectively address U.S. dependence on oil and the actions Congress must take to implement such a policy.

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

SUBCOMMITTEE ON NUCLEAR REGULATION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Tuesday, October 2, beginning at 9:30 a.m., to conduct a hearing on the Federal program for the disposal of spent nuclear fuel and high-level radioactive waste.

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

ADDITIONAL STATEMENTS

NEW STUDY ON WEAPONS COSTS

● Mr. PRYOR. Mr. President, I would like to submit into the RECORD a recent publication of the Project on Government Procurement, a nonprofit organization dedicated to uncovering and eliminating Government waste.

This recent study is entitled "Weapons Unit Costs: Current versus Predecessors and Current versus Future." It attempts to compare the costs of current procurement items in the defense budget with similar items in past budgets. The study uses data supplied by the Defense Department.

The study is provocative and interesting and I recommend it to my colleagues for review.

Mr. President, I ask that the text of the study be printed in the RECORD at this point.

The text follows:

[Project on Government Procurement, June 11, 1990]

WEAPONS UNIT COSTS CURRENT VERSUS PREDECESSORS AND CURRENT VERSUS FUTURE

(Prepared by Greg Williams, Research Associate)

The following tables are meant to illustrate the cost of technology as it is applied to new weapons systems. Obviously, improvements in technology bring benefits as well. For instance, the Mx missile carries three times as many warheads as does the Minuteman III to which it is compared. The questions is—Does this make it worth twelve times as much money?

In an effort to be objective, we have used the Defense Department's own figures as much as possible in the composition of these tables. In Chart I, with the noted exceptions, all of the figures are DoD's own estimates of how much weapons cost. They are taken from DoD's budget requests from the years indicated. They all refer to the acquisition unit costs of the weapons: In other words, how much it would cost to buy a single example of that weapon, not counting the R&D and other associated costs.

The figures in the second chart come from a greater variety of sources, and are specifically footnoted. These figures will be further discussed below that chart.

We have used DoD's approved method of incorporating inflation in the cost of weapons systems. All of the figures are inflated or deflated to 1990 dollars using the Major Commodity Deflators for total obligation authority listed in *National Defense Budget Estimates for FY 1990/1991.* This document is published by the Office of the Assistant Secretary of Defense (Comptroller).

The weapons compared, again, are not meant to be equivalent in performance. They represent consecutive generations of a given class of weapons. For instance, the C-5 and C-17 are both heavy lift aircraft. However, the C-17 is intended to carry material much closer to the front than is the C-5, and to land on shorter airstrips. On the other hand, the C-17 is also significantly smaller. Nonetheless, the C-17 represents the current incarnation of the Air Force's ideal airlifter. Information on all of these weapons systems is too voluminous to include here. The Project staff will be happy to answer any questions you may have on these items.

CHART I.—PRICES DEFLATED WITH DOD MAJOR COMMODITY DEFLATOR

System	Last price	Number bought	Predecessor	Year bought	Number bought	1990 price (millions)	Percent price increase
Mx missile	148.9	12	Minuteman III	75	61	$12.3	1,111
B-1B bomber	180.8	48	B-52G	57	100	46.3	290
F-15E fighter	49.3	36	F-4E	73	48	10.4	374
C-5B cargo plane	102.1	21	C-141	65	284	30.9	230
CG-47 missile cruiser	873.8	5	CGN-41	75	1	673.9	30
SSN-688 Attack submarine	903.9	2	SSN-637	69	2	320.0	182
EA-6B EW plane (refurbish)	104.0	3	EA-6B (new)	89	9	56.7	83
F-14 (refurbish)	70.2	12	F-14 (new)	87	15	46.0	53
Trident II missile	28.1	52	Trident I	84	52	15.5	81
M1 Tank	2.9	481	M60	77	886	1.1	164
AH-64 Attack helicopter	11.7	132	AH-1S	81	15	4.2	179
			AH-1T	88	34	7.4	58
Average							236

All of the above figures are acquisition expenditure requests, taken from DoD testimony submitted to Congress with the following exceptions:

The 100 B-52's purchased were cited in *Weapons and Warfare,* edited by Bernard Fitzsimmons, Phoebus Publishing, 1978. See Vol. 22, p. 2405. The program cost listed is from hearings on the FY 1957 Defense Budget, before the House Appropriations Committee, H.R. 10986, p. 826. This cost included spares and supporting facilities, in addition to the actual aircraft.

The 284 C-141's are listed as having cost $1,783 million in 1965 dollars in *U.S. Military Aircraft Data Book, 1989,* prepared by Ted Nicholas and Rita Rossi of Data Search Associates. Procurement was spread over three years, starting in 1963.

Acquisition costs do not include research, development and support items. Requests are the budgets submitted to Congress by the executive branch. They are a reflection of what the military planned to spend, not

what they actually did spend. These figures are used because they are the most consistent, and widely available.

CHART II.—PAST PROJECTIONS VERSUS CURRENT PROJECTIONS OF FUTURE WEAPONS COSTS

Weapon system	Promised price	Current price	Percent increase	Performance issues
Mx Missile	87.0	148.9	71	
B–2 stealth bomber.	321.6	570.5	77	No testing of its stealth characteristics, or weapons delivery.
Advanced tactical fighter.	80.0	105.3	32	No flight testing whatsoever.
C–17 cargo plane.	115.7	293.7	154	Prototypes have not flown, and computer software is experiencing problems.
DDG–51 destroyer.	873.7	696.6	−20	No active ECM. No testing at sea. Limited antimissile defenses.
SSN–21 Sub: lead.	1,867.7	1,959.0	4	Computer Software problems, and limited weapons carriage. No testing at sea.
Follow-ons..	1,098.7	1,469.1	34	
Trident II missile.	45.2	28.1	−38	Safety concerns.
M1 tank	1.7	4.3	153	Never met its reliability requirements. Not fuel efficient.
Average			52	

The purpose of this chart is to show how weapons system costs often grow beyond early projections. With the exception of the ATF, all of the above systems are included in this year's procurement budget as production items. The prices listed show how those projections line up with the actual budget requests when production starts. Bear in mind, however, in most of the cases listed in this chart, not a single unit has been completed yet. The prices of DDG–51, SSN–21, the C–17 and the Advanced Tactical Fighter could all increase significantly by the time they actually enter service. But even now one can see how far off projections can be.

On the other hand, the costs of these weapons should go down as production continues. However, the M1, D–5 and Mx are all well into production. And the Seawolf SSN–21 "class" price is for the third submarine of that design (the Navy often buys several ships of a new class before the first is completed.). So it is unclear that this "learning curve" will bring weapons costs back to their original projections.

The figures used in the chart above were collected from many sources, including testimony and budget material submitted to Congress by DoD, magazine and newspaper accounts, and military service public affairs officers. Generally, this chart compares past projections of program costs to present projections of acquisition. Program costs include all research and development and other associated costs, in addition to the price paid for the actual equipment. Acquisition costs are the costs only covering the purchase cost of the weapons system itself. This comparison paints a somewhat unrealistically favorable picture of the situation. We arranged the chart in this way because, before a weapon actually enters production, program costs are often the only figures available, and after a weapon is in production, the acquisition cost is the most meaningful figure available. Once a weapons program reaches maturity, it is difficult to separate out what costs are directly connected with the weapon and which aren't. The acquisition cost is the standard DoD price, given in well-defined terms while a weapon is in production. When we have been unable to get the desired figures, we have sometimes substituted program for acquisition costs, or vice-versa. However, we have in no case compared a past acquisition cost to a present program cost. This would be unfair since the additional R&D and other costs would make the price seem to grow more than it actually had. Thus, in the cases in which we have been unable to develop more accurate data, we have given the military the benefit of the doubt.

Specific source citations for these figures are included in the endnotes.●

AMTRAK: CELEBRATING 20 YEARS OF FAILURE

● Mr. ARMSTRONG. Mr. President, the Senate will soon adopt a resolution for the curious purpose of commemorating 20 years of subsidizing Amtrak, so I want to review whether Amtrak has provided, as one supporter hoped at its creation, "a long-awaited answer to the disappearing passenger train dilemma."

The answer should have been evident in 1970, since passenger travel by train had already been on a near continuous decline for over 70 years. The train's heyday was 1895 when trains carried 95 percent of intercity traffic. But, the invention of the automobile and Henry Ford's affordable Model T, and the Wright brothers' discovery of flight signaled the end of the line was near for the passenger train. Railroads' last profitable year for passenger traffic was 1936. By 1970, the Interstate Highway System and jet air service were well-established, and the railroads simply did not have enough people riding trains to offer passenger service any longer.

Congress, though, had high hopes that passenger trains could be revived. Congressional supporters of Amtrak explained, "the number of intercity travelers continues to grow each year * * * rail passenger service can play a valuable role in intercity transportation." They thought the objective could be accomplished with a facelift, "an alert, imaginative program, thoroughly promoted and publicized, can recreate an acceptable image for railroad passenger travel, and bring this mode of transportation back into profitable use." Another proponent thought an answer might lie in the future: "Hopefully new developments in high speed rail technology will enable Amtrak to eventually become solvent." So, Congress provided a $40 million grant and a $100 million loan with high expectations that travelers would soon again flock to the trains.

The subsequent 20 years have been disillusioning for Amtrak's well-intentioned supporters. Cars continue to be the dominant and preferred mode of travel, accounting for 80 percent of intercity travel. In 1978, air travel was deregulated and increased 68 percent over the next 10 years. Now, 17 percent of intercity travel is by airplane. Amtrak, however, continues to lag behind. It accounts for only one-third of 1 percent of intercity travel today, a slight decrease from its one-half of 1 percent share in 1970. In fact, Amtrak can hardly claim to be predominantly an intercity carrier, since about 45 percent of its passengers are commuters.

While Amtrak is a blip in the overall transportation scheme, it has also failed to find a particular market niche. Its rigid, skeletal route structure has less than 500 stops, so it is not a viable alternative for most areas. In fact, Amtrak does not even stop in South Dakota, Wyoming, Oklahoma, Maine, or Alaska. According to a GAO study, Amtrak subsidies compete with bus service, a more important transportation mode in rural areas. Even in the Northeast corridor, where Amtrak ridership is the highest, it carries less than 10 percent of the total intercity traffic among cars, planes, and trains.

Amtrak has failed as a transportation mode despite having a monopoly in passenger train service and being heavily subsidized. Over $14 billion has been spent on Amtrak subsidies since 1970. The resolution says Amtrak hopes to cover 100 percent of its operating costs by the year 2000, but this is probably just more wishful thinking. The resolution does not mention if Amtrak will ever cover its capital costs, and of course it will not. Congress, moreover, recently approved legislation to increase Amtrak's subsidies from $656 million in 1990 to $712 million in 1992. At this rate, taxpayers could be socked for another $7 billion before the end of this century.

Mr. President, trains have a nostalgic appeal, but there is no dilemma about the disappearance of the passenger train; it can't compete with the auto and airplane. There is no more likelihood that passenger trains will become a viable transportation mode today than if the Government had subsidized the steamship and stagecoach at the turn of the last century.●

THE PENSION RESTORATION ACT

● Mr. COATS. Mr. President, I am pleased to be an original cosponsor of S. 3120, the Pension Restoration Act. This bill was introduced to provide partial redress for those unfortunate workers who lost their vested pension benefits when their employers' pension plans terminated with insufficient funds prior to the enactment of the Employee Retirement Income Security Act [ERISA].

On the morning of December 9, 1963, the 11,000 employees at the Studebaker auto plant in South Bend, IN, reported to work only to be told that the company was closing its plant and moving to Canada, and they discovered suddenly that they had not only

lost their jobs, but also their pensions as well.

As a consequence of this experience, and similar disasters that befell retiring workers in other States, the Congress in 1974 passed ERISA. Prior to its enactment employers were legally obligated to pay earned pension benefits up to the limit of the pension plan's assets; if the assets were insufficient to pay the benefits when the plan was terminated, the employees were left high and dry. Under ERISA's pension insurance program, pension plan participants are guaranteed that their basic benefits will be paid by the Pension Benefit Guaranty Corporation should their plan collapse for some reason.

Today some 40 million workers and their surviving spouses are protected by the Pension Benefit Guaranty Corporation. Unfortunately some 46,000 Americans who had their pensions terminated between 1942 and 1974 and lost their vested benefits through no fault of their own were not covered under ERISA. According to the Department of Labor, some 13,000 plans terminated during those years, and 6,000 of those plans did not have sufficient funds to pay the benefits that thousands of workers had worked their lifetimes to earn.

It is a tragic irony that the very people whose losses resulted in the passage of ERISA, including those Studebaker retirees, were overlooked and were left uncompensated pursuant to that act. The Pension Restoration Act of 1990 is designed to provide some compensation for the people who were still left unprotected when ERISA was enacted. Many of these pension losers have died. In 1974 there were 115,000 living individuals who had lost vested benefits despite ERISA. Today the estimated 65,000 survivors are old and aging, living on meager resources, in many cases. Surely justice dictates that finally the Congress should rectify its mistake and provide some restitution for these remaining pre-ERISA pension losers who were overlooked 16 years ago.

Under this bill each individual pension loser would be compensated $75 a year for each year worked under a pension plan. Thus, a retiree who worked 20 years under a plan would receive $1,500 a year. A surviving spouse would receive half that amount. Payments would be made once annually beginning with the effective date of the legislation. The Pension Benefit Guaranty Corporation would administer this program, which would be paid entirely by Pension Benefit Guaranty Corporation premiums.

The estimated cost of this program would be less than $50 million in 1990 to compensate an estimated 26,674 retirees and 14,392 widows and widowers. This cost will continue to decrease each year as the number of beneficiaries decreases. No increase in Pension Benefit Guaranty Corporation premium levels will be required to meet the payments. This is a modest amount to pay compared to the significant benefits lost by these retirees.

Mr. President, I urge speedy consideration of this legislation so that those thousands of pension losers in Indiana and elsewhere will be provided some of the pension funds they earned and were promised but lost through plan termination and congressional oversight, but no fault of their own.

In conclusion, Mr. President, I wish to pay tribute to Odel Duke Newburn, who was three time president of UAW Local No. 5 when Studebaker closed its plant. It is due to the determination of this Hoosier to stir the Congress into action and his tireless efforts to help his fellow former workers at Studebaker that this bill is being proposed today.●

WE NEED TO STOP VIOLENCE AGAINST WOMEN

● Mr. SIMON. Mr. President, Senator BIDEN has introduced a bill, which I am proud to cosponsor, to combat violence against women. The bill is a comprehensive measure designed to make streets safer for women through increased penalties and grants to States and localities for training programs for police and prosecutors. In efforts to diminish violence against women in their own homes—domestic violence—the bill encourages arrests of abusing spouses and grants interstate enforcement of protective orders. Finally, the bill creates a civil rights remedy for victims of sexual assault.

When the bill comes before the committee later this week, I intend to propose an amendment calling for educational training of State and Federal judges on the issue of sexual assault. I believe such training is extremely important and necessary in order for judges to have a clear sense of the traumatic impact of sexual assault on the victim. I have spoken with the National Network for Victims of Sexual Assault, the NOW Legal Defense and Education Fund, as well as the Illinois Coalitions Against Domestic Violence and Sexual Assault, and they strongly support this measure. They believe that lack of education leads to outdated attitudes in sexual assault cases, and that judicial training is needed in order to better protect victims' rights. Additionally, this amendment is consistent with a provision in title II of Senator BIDEN's bill calling for judicial training on domestic violence.

Also is support of judicial education are the findings of a 1990 Illinois Task Force sponsored by the Chicago Bar Association, the Illinois State Bar Association, and the Women's Bar Association of Illinois. Their report documents the need for legal and judicial reform in cases involving women and again stresses the need for judicial education and training. To my knowledge, Illinois is the first State to take such a comprehensive look at gender bias. Their review and recommendations go beyond the legal system. I ask to print the executive summary in the RECORD and urge my colleagues to read it.

The executive summary follows:

EXECUTIVE SUMMARY

In 1988, the Illinois State Bar Association, Chicago Bar Association, and the Women's Bar Association of Illinois established a Task Force to study and report on gender bias in the Illinois courts. The 44-member Task Force was comprised of judges, lawyers, academics, and lay experts from throughout the State of Illinois. Its members were selected with an eye to assuring representation of each judicial circuit, both sexes, the bench, bar and lay communities, and people with different types of both criminal and civil law experience, as well as minorities and different age groups. Subdivided into a number of committees charged with investigating different substantive areas of law, the Task Force carried out its empirical research by means of public hearings, specialized roundtables, interviews, and surveys. The report which follows this Executive Summary represents the results of that research.

The Report is divided into four main areas of particular concern: (1) domestic relations, (2) criminal law, (3) civil damage awards, and (4) courtroom dynamics. One topic—domestic violence—is treated both in the chapter on domestic relations and in the chapter about criminal law, because it involves both civil and criminal remedies. Each section or sub-section contains a lengthy description of the substantive findings concerning that area of the law, followed by a summary of findings and a list of recommendations for reform. A detailed description of the history of the Task Force and the methodology which each committee used is also included in the full report. This Executive Summary describes the main findings contained in each section and also sets forth the recommendations proposed in relation to each area of the law. Preliminarily, however, the Task Force believes that the following procedural recommendations are essential to the success of any reforms which may result from this Report:

(1) The Illinois Supreme Court and the sponsoring bar associations should establish an implementation committee charged with the task of seeing that the recommendations set forth in this Report are implemented as soon as possible.

(2) If it appears desirable after review of this Report, the Illinois Supreme Court and the sponsoring bar associations should convene a "Phase II" Task Force on Gender Bias to investigate additional areas relevant to the issue of gender bias in the courts.

I. DOMESTIC RELATIONS

The investigation of gender bias in domestic relations law focused upon four issues: (1) property distribution, maintenance, and litigation expenses; (2) child support; (3) child custody and visitation; and (4) domestic violence.

Property distribution

Although the Illinois Marriage and Dissolution Act of 1977 mandates an "equitable

distribution" of property upon the dissolution of marriage, the Task Force found that the typical distribution awarded by the courts disadvantages women in a variety of ways. First, many lawyers believe that the courts ignore certain statutorily mandated factors when distributing marital property, such as each party's ability to acquire future assets, the dissipation of assets, and whether property is in lieu of maintenance. Typically, dissolution decrees instead simply divide tangible marital assets and expect that the two spouses will subsequently be independent.

This division works to the advantage of the spouse, usually the husband, who has been actively involved in the work force and to the disadvantage of homemakers, whose efforts have in fact contributed to the creation of their husbands' career assets. Moreover, wives typically request and are awarded the marital home, in order to maintain stability for the couple's children. This results in assigning the majority of the couple's liability, in the form of the mortgage, to the partner who typically earns the smallest amount of the family income. Men, on the other hand, typically retain the majority of the couple's liquid assets, such as stocks, bonds, and business assets, and are thus able to gain a fresh start after marriage with little debt and decreased expenses.

Finally, the Marriage and Dissolution Act does not effectively impose a duty upon the parties to a divorce proceeding to preserve the marital assets during the pendency of that proceeding. Surveys carried out by the Task Force lead it to believe that the courts also fail to take into consideration the dissipation of assets when distributing marital property, thus compounding the problems which the typical distribution of property creates.

Maintenance awards and litigation expenses

Awards of maintenance (formerly called alimony) have become less frequent and of shorter duration under the new Marriage and Dissolution Act. If awarded at all, support is usually limited to "rehabilitative maintenance," that is, support "for the time necessary to acquire sufficient eduction or training to enable the party to find appropriate employment." This change has resulted in serious disadvantages to older women upon the dissolution of marriages of long duration. The reality is that older women who have devoted their lives to homemaking and caretaking of children often cannot find suitable training and employment. The Task Force believes that the homemakers' contributions to their families are inappropriately undervalued, both in the distribution of marital property and in the allocation of maintenance.

Under Illinois' new modified "no-fault" divorce law, moreover, some domestic relations attorneys believe that women have lost a significant source of leverage which helped them attain more favorable settlements in the past, by simply refusing to agree to divorce. This change in bargaining position is aggravated because women typically do not have access to legal representation equal to that of their divorcing spouses. Even if a woman may be entitled to an award of attorney's fees at the end of a dissolution proceeding, courts are reportedly reluctant to award prospective fees during the pendency of that proceeding, making it difficult for some women to obtain adequate representation. Moreover, in many parts of the state, no legal services are available for domestic relations cases involving poor people.

Women's lack of access to legal representation places women at a disadvantage during settlement negotiations, when most domestic relations cases are resolved. Moreover, the fact that attorneys recover their fees earlier in a settlement may have the effect of forcing settlements on terms that are disadvantageous to women.

Finally, one further problem which the Attorney Registration and Disciplinary Commission called to the attention of the Task Force is the incidence of sexual relationships between domestic relations attorneys and their clients. The Task Force is concerned that such relationships, during the pendency of a divorce, may conflict with the attorney's fiduciary responsibility to the client, possibly prevent any reconciliation of the parties, or affect the negotiation of property rights and custody.

RECOMMENDATIONS

A. Legislature

1. As the Illinois State Bar Association has already suggested, the Marriage and Dissolution Act should be amended to provide for an automatic temporary restraining order "freezing" marital property during the pendency of dissolution proceedings and temporary support should be awarded from the proceeds of this property.

2. The Marriage and Dissolution Act should also be amended to require the court to review maintenance awards periodically to determine whether there continues to be a disparity of incomes and whether the spouse receiving maintenance can show due diligence in seeking employment and job training opportunities.

B. Judiciary

1. The courts should adopt an "investment partnership" model of marriage and its dissolution, which would place emphasis not on the equal treatment of spouses at the time of divorce but on each spouse receiving equal benefits of the marriage and thus of all the assets acquired during the period of the marriage.

2. Judges should be required to make findings for the record concerning the factors being used to determine equitable distribution of property, including career assets that take into account the future earning potential of the parties.

3. In order to reduce problems that attorneys and courts may have in placing a value on future earnings, economic formulae should be adopted incorporating principles found in computer models that analyze the long-term consequences of divorce judgments.

4. In cases involving older women who have primarily served as homemakers and caretakers of children in long-term marriages, courts should not be averse to awarding long-term maintenance when justified.

5. If a spouse does not have access to liquid marital property, judges should routinely award prospective attorney's fees early in the proceedings to guarantee adequate legal representation for both parties; and the Illinois Supreme Court should adopt a rule implementing this recommendation.

6. An amendment to the Rules of Professional Conduct should be drafted concerning sexual relationships between attorneys and their clients in pending divorce proceedings, incorporating a presumption that such relationships are inherently unethical and unprofessional.

C. Bar Associations

1. Education concerning the problems and issues raised in this report should be included in programs of continuing legal education.

D. Attorney Registration and Disciplinary Commission

1. The ARDC should use all of its fact-finding powers to investigate each complaint alleging an improper attorney-client sexual relationship, as it would any other complaint.

2. Complaints concerning attorneys-client sexual relationships should be assigned to panels including female and male members, as well as members from fields outside the domestic relations bar.

E. Law Schools

1. Discussion of the problems and issues raised in this report should be included in classes concerning legal ethics and family law.

Child support

Illinois law now provides statutory guidelines for the amount of child support to be awarded upon the dissolution of marriage. However, the Task Force heard testimony that these guidelines, which were intended to be minimum awards, are used instead as maximums; and courts appear reluctant to modify child support awards as children grow older, to adapt to their changed needs.

Moreover, the enforcement of child support awards in Illinois is inadequate to ensure that the custodial parent, usually the mother, has the resources necessary to meet the needs of the couple's children. Statistics reviewed by the Task Force show that the majority of child support awards are paid irregularly, partially, or not at all. Although the adoption of a statutory provision for automatic income withholding in Illinois has resolved enforcement problems in cases were the non-custodial parent works at a regular job, there continue to be significant problems enforcing child support awards against self-employed or irregularly employed fathers.

Witnesses testified at the Task Force public hearings that they were forced to return to court repeatedly to enforce child support awards. Moreover, courts are reluctant to impose even very brief prison sentences on delinquent parents and do not consistently impose interest on past-due child support judgments, although such interest is now statutorily mandated. Finally, the federally funded Child Support Enforcement Program, which provides free legal representation, has apparently not provided or marketed its services statewide. Although Illinois Supreme Court Rule 296, promulgated in 1988, provides for the automatic monitoring and enforcement of child support awards, this program is also not available in all counties.

RECOMMENDATIONS

A. Legislature

1. The legislature should change the law on modification of child support orders to provide cost-of-living increases every three years in certain circumstances or to set forth more clearly the standards for modification of child support orders.

2. The legislature should explore new remedies for enforcement of child support from self-employed parents, including attachment of business assets and suspension of professional licenses.

3. The legislature should fund a program of automatic child support enforcement

under Supreme Court Rule 296 for all persons for whom federal funds are not available.

4. The legislature should implement a quasi-judical process, using hearing officers working in conjuction with judges, to set and enforce child support awards, especially in larger counties.

5. The legislature should add as a remedy under the IMDMA that lost wages may be reimbursed to custodial parents who are required to take time off from work to appear in court to enforce their child support and maintenance awards.

B. Judiciary

1. Judges should receive education and training on the effectiveness of jail as a remedy in child support cases, especially where the delinquent parent is known to have the financial means to comply but repeatedly flaunts the court's orders.

2. Smaller counties should be encouraged to implement Supreme Court Rule 296, which provides for monitoring and automatic enforcement of child support awards.

3. Judges should receive education concerning the cost of quality care, food, and clothing for children.

C. Court Administration

1. The Child Support Enforcement Program, which provides free legal representation to enforce child support awards, should market its services to custodial parents throughout the state.

2. Counties adopting Supreme Court Rule 296, which provides for automatic monitoring and enforcement of child support awards, should market these services as well.

Child custody and visitation

Although the presumption that custody of children should be awarded to their mothers has been abolished by statute in Illinois, custody of children is nonetheless awarded to mothers in the vast majority of cases. This may result either from the preference of the parties or from a continuing judicial preference for maternal custody. An informal continuation of the "tender years" presumption against awarding custody of children under the age of five to the father may also place men at a disadvantage in child custody decisions. In addition, roundtable participants reported that some courts even refused to give overnight visitation rights to fathers of very young children, without considering the capacity of the individual men to care for those children. Finally, some women deny visitation inappropriately in retaliation for their ex-husbands' failure to pay child support.

The Task Force believes that the genuine contributions of each parent to caregiving should be taken into account in decisions about custody and visitation. Moreover, preference should not be given to the parent of superior economic means, thus discriminating, typically, against low-income women.

Domestic relations attorneys who testified at the Task Force roundtables believe that there is now a near-presumption in favor of joint custody in Illinois and that this presumption has become yet another weapon in litigation over property distribution and child support. Non-custodial parents sometimes threaten to seek joint or sole custody in order to reduce their financial obligations to their families or to harass an ex-spouse.

Joint custody may be appropriate in some circumstances, but only where divorced parents are able to communicate and to reach shared decisions about the child's welfare. The courts should carefully scrutinize the facts concerning joint custody in each case; and joint custody should only be awarded when both parties consent and have filed a Joint Parenting Agreement with the court, specifying each parent's rights and responsibilities for all major decisions involving the education and care of the child.

RECOMMENDATIONS

A. Legislature

1. The statute should be amended to provide that joint custody be awarded only when both parents consent.

B. Judiciary

1. Judges should receive training on problems associated with joint custody.

2. The court should carefully scrutinize the facts concerning joint custody in each case, and joint custody awarded only when the parents have filed a Joint Parenting Agreement with the court.

3. Judges should appoint trained guardians ad litem or attorneys for the child to represent the interests of the child and should order family background investigations in contested custody cases.

4. Both violations of child support orders and violations of visitation arrangements should be enforced strenuously, without the need for repeated court appearances which deter parents who cannot miss work or who must hire sitters from pursuing their rights.

5. The courts should be more sensitive to economic disparities between the parties and should correct disparities by increasing maintenance and child support rather than by awarding custody to the wealthier parent.

Domestic violence

Although the Task Force treated domestic violence primarily as an issue for the criminal justice system, a number of related problems were nonetheless mentioned in connection with domestic relations cases. Domestic violence advocates complained that some court clerks refuse to assist women filling out court forms to obtain judicial remedies in domestic violence cases, even though such assistance is statutorily mandated. Courts also frequently, though improperly grant "mutual" orders of protection protecting both parties from abuse by the other in cases where only one spouse has filed pleadings requesting an order of protection. Additionally, mediation is usually required of the parties in domestic relations cases, although it may be counter-productive in cases involving a history of domestic violence. Finally, some judges refuse to order that abusive spouses' visitation of children be subject to supervision, although visitation in such cases may provide an occasion for further abuse of either the children or the abused spouse.

RECOMMENDATIONS

A. Legislature

1. Legislation should be passed to require mediation in which the two parties meet separately and not together in cases where there has been a history of abuse, to help protect the interests of an abused spouse who may be unable to express views conflicting with those of her batterer in his presence.

B. Judiciary

1. Judges should require that visitation be supervised in cases where there has been a history of abuse and the victim requests such supervision.

2. The statute prohibiting the granting of mutual orders of protection where both parties have not filed written pleadings should be strictly enforced.

3. Judges should not require mediation in cases involving domestic violence.

C. Courtroom Administration

1. Court clerks should be directed to comply with the statutory mandate to assist domestic violence victims in filling out the forms to obtain orders of protection.

II. CRIMINAL JUSTICE

In relating to the criminal justice system, the Task Force concentrated on three areas which raise concerns about the possibility of gender bias in the Illinois courts: sexual assault, domestic violence, and criminal sentencing.

Sexual assault

Rape is a crime whose adult victims are almost invariably women. Yet victims may be reluctant to prosecute rape crime, at least in part because of the treatment they receive from the justice system. Lengthy continuances, repeated court appearances, and lack of communication with prosecutors make victims inclined to drop rather than to follow through on charges which, at best, are emotionally difficult to prosecute. In some instances, moreover, victims' names continue to be published in court opinions, potentially deterring prosecution of sexual assault cases.

In 1984, Illinois passed a new law to govern sexual assault, the Criminal Sexual Assault Act. Although this statute has demonstrably increased the number of prosecutions for rape in Illinois, significant problems remain. At least in part because of fear of the treatment which victims receive from the criminal justice system, rape remains a substantially underreported crime. When it is reported, police and prosecutors screen out large numbers of cases. Although the police are reported to take sexual assault complaints more seriously since passage of the new law, only one-half of all cases result in arrest or other closure. Moreover, prosecutors consistently fail to prosecute cases in which the victim was acquainted with or had previously had sex with the offender and are especially reluctant to prosecute cases involving spousal sexual abuse, although the new law also covers those cases.

There also appears to be a continuing suspicion of the credibility of sexual assault victims on the part of police, prosecutors, judges, and juries. Although rape is rarely committed before eyewitnesses and is often not reported immediately, prosecutors and investigators seek corroboration, including evidence of a "prompt complaint." Judges and juries also expect more corroboration in sexual assault cases than in other cases of a similar class.

Cases involving "date" or "acquaintance rape" are particularly susceptible to dismissal for lack of corroboration, such as evidence of physical force, or because the prosecutor fails to believe the victim. In addition, evidence of the victim's past sexual activity continues to be introduced in these cases, although the "Rape Shield Statute" prohibits its introduction as to prior activity with persons other than the defendant himself. Finally, bail and sentencing appear to be more lenient in cases where the victim was aquainted with her assailant than in cases of "stranger rape."

RECOMMENDATIONS

A. Legislature

1. Additional funding should be appropriated to provide victim advocates and other support services to victims.

2. Enforcement provisions should be added to the Crime Victims' Bill of Rights.

B. Bar Associations

1. Bar associations should coordinate and provide continuing legal education courses for bar members concerning sexual assault and especially about problems of acquaintance rape.

2. Bar associations should discourage attempts to abrogate or circumvent the Rape Shield Statute.

C. Judiciary

1. Education concerning current research on sexual assault, and especially on acquaintance rape, should be included in training and educational programs for judges.

2. Pre-trial continuances in sexual assault cases should be limited, whenever possible, so that victims with work and child care responsibilities will not be deterred from prosecuting sexual assault cases.

3. The same standards should be applied in setting bail and sentencing offenders in acquaintance cases as are applied to cases in which the victim and defendant are strangers.

4. The Rape Shield Statute should be enforced consistently.

5. Judges should discourage and discipline attempts to abrogate or circumvent the Rape Shield Statute.

6. The Illinois Supreme Court should promulgate a rule prohibiting the publication of the names or identities of victims in judicial opinions concerning sexual assault.

D. Law Enforcement (Police, Prosecutors)

1. Education concerning sexual assault, acquaintance rape, and rape trauma syndrome should be mandatory for both police and prosecutors.

2. Investigative techniques used by police and prosecutors should be improved, so as to include victim-sensitive interviewing in sexual assault cases.

3. Police and prosecutors should comply more consistently with the mandates of the Crime Victims' Bill of Rights.

4. Specialized units for the prosecution of sexual assault cases should be established in all jurisdictions, to promote vertical handling of sexual assault cases.

5. Victims of sexual assault by an acquaintance should be treated with the same seriousness as those who are sexually assaulted by a stranger.

6. Statistics should be maintained concerning charging decisions in sexual assault cases, in order to improve enforcement of the sexual assault laws.

E. Court Administration

1. A safe waiting place should be provided for victims of sexual assault during court proceedings, so that they do not need to wait in the same area as their assailants.

2. The publication of victims' names and identifying information in published case opinions should be prohibited.

3. Resource information on the dynamics of sexual assault and educational programs which incorporate current research on sexual assault should be provided to the judiciary.

4. Statistics should be maintained concerning prosecution and conviction rates in sexual assault cases, in order to improve enforcement of the sexual assault laws.

F. Law Schools

1. Courses dealing with current sexual assault laws and on understanding the dynamics of sexual assault should be provided.

Domestic violence

Domestic violence against women is a widespread problem in Illinois, affecting an estimated 253,000 women each year. In 1982, Illinois passed a new Domestic Violence Act, which provides, among other things, for the issuance of an Order of Protection against a domestic violence offender and for criminal sanctions. However, public acceptance of the intent to effectively criminalize acts of domestic violence has been slow, and there remain pervasive problems in the attitudes of those charged with enforcement of the statute.

Although most law enforcement personnel in Illinois now demonstrate a knowledge of the rights of domestic violence victims and concern for those victims, there are still some police who do not regard domestic violence as a serious crime and who enforce the law selectively. Moreover, although a majority of prosecutors are willing to prosecute domestic violence cases, a significant minority of prosecutors still believe that these cases belong in civil court and are very selective about which cases they will prosecute. Domestic violence cases are rarely charged as felonies.

Like sexual assault, domestic violence is an area in which victims are likely to drop charges, both for emotional reasons and for reasons related to court procedure, such as the length of proceedings and number of court appearances. The provision of support services to victims seems to make a difference; but these services are not consistentiy available throughout the state.

The majority of Illinois judges treat victims of domestic violence with respect and sensitivity and are knowledgeable about their rights, although isolated cases of judicial insensitivity were reported to the Task Force. However, judges rarely sentence domestic violence offenders to time in prison. Instead, the penalty imposed in the majority of cases is simply to require counseling.

Finally, the situation of the battered woman who kills her abusive mate presents special problems for the criminal system. Studies show that women who use deadly force do so only after they have become convinced that they will themselves be killed. However, such women may have a difficult time meeting the legal standard for self-defense, which is based upon an assumption that the antagonists are of equal strength and that the defender strikes back at the moment of being attacked. Thus, battered women convicted of killing their abusers have sometimes received disproportionately severe sentences, which have been relieved only by the exercise of executive clemency.

RECOMMENDATIONS

A. Legislature

1. Additional funds should be appropriated for victim advocate services to provide adequate court support to victims.

2. The privilege protecting the confidential communications between domestic violence victims and their advocate-counselors should be strengthened.

3. The statutory penalty for repeated convictions of domestic violence should be increased.

B. Police

1. Pro-arrest policies should be established for violations of orders of protection, misdemeanors, and felonies in domestic violence cases.

2. Written guidelines should be developed for implementation of the Illinois Domestic Violence Act and Domestic Battery Statute.

3. Specific training guidelines should be established concerning the dynamics of domestic violence and the effect of immediate criminal justice intervention.

4. The proivision of the Illinois Domestic Violence Act which requires notification to victims of their rights under the Act should be strictly enforced.

5. Domestic violence reports should be tracked accurately, in order to improve enforcement of the law.

C. Prosecutors

1. Pro-prosecution policies should be established for domestic violence cases.

2. Either vertical prosecution or a special unit for handling domestic violence cases should be established in all jurisdictions.

3. Specific training guidelines should be established concerning the dynamics of domestic violence and the effect of immediate criminal justice intervention.

4. Mandatory educational programs should be provided to all prosecutors concerning the battered woman syndrome.

5. Dismissals or failures to prosecute domestic violence cases should be tracked, in order to improve enforcement of the law.

D. Defense Attorneys

1. Defense attorneys should educate themselves concerning the battered woman syndrome and the cycle of domestic violence and learn to recognize when domestic violence is a mitigating factor for battered women charged with committing violence against their abusers.

2. Defense attorneys should become knowledgeable about support services for battered women.

E. Judiciary and Court Administration

1. Specific training guidelines should be established about the dynamics of domestic violence and the effect of immediate criminal justice intervention.

2. Safe waiting areas should be set up in the courts to provide protection to domestic violence victims awaiting court hearings.

3. Judges should more frequently mandate counseling for batterers.

4. Judges hearing domestic violence cases should consider the appropriateness of ordering plenary relief, including decisions on custody and finances, in one forum, in order to reduce the number of times a domestic violence victim must appear at court hearings.

5. Where necessary, judges hearing domestic violence cases should issue orders requiring domestic violence defendants to vacate the domestic premises.

6. Judges should consider the appropriateness of imposing sentences involving imprisonment for domestic violence offenders and for violations of orders of protection.

7. The probation department should be required to examine issues of domestic violence in presentence reports.

8. Members of the judiciary should recognize the appropriateness of admitting evidence concerning the battered woman syndrome, where relevant, in cases where a battered woman is on trial for killing her abusive mate.

F. Bar Associations

1. Bar associations should coordinate and provide legal education on the dynamics of domestic violence, the battered woman syndrome, and the use of expert testimony in domestic violence cases.

G. Law Schools

1. Education concerning the dynamics of domestic violence and its effect on the criminal and civil court systems should be included in the curriculum.

Criminal sentencing

Participants in the criminal justice system believe that gender enters into decisions concerning bail and sentencing in Illinois. However, there is disagreement concerning whether the differential treatment works to the benefit or detriment of women. Prosecutors and defense attorneys hold the majority perception which is that female offenders receive lower bail and shorter sentences than male offenders for similar crimes, without regard to their responsibilities for child care. However, groups and individuals who work on a regular basis with convicted and incarcerated female offenders, including court and correctional personnel, hold a minority view. These groups believe that female offenders are treated more harshly than males or, at a minimum, are not given appropriate consideration for their familial responsibilities. Statistics indicate that this is a plausible hypothesis. However, there is no reliable data base in Illinois to prove or disprove either of the conflicting perceptions.

RECOMMENDATIONS

A. The Judiciary

1. Education should be provided for judges in the area of sentencing standards and alternatives, in order to encourage sentences based upon appropriate statutory factors in aggravation and mitigation, and not upon gender alone.

2. The Supreme Court should convene a task force to examine the treatment of juvenile offenders in the juvenile and criminal justice systems.

B. Law Enforcement Personnel

1. Charging procedures and decisions should be reviewed, to ensure that gender alone is not the dispositive factor in enforcing the law.

C. Court Administration

1. A uniform reporting system should be developed and implemented for bail, conviction and sentencing data, which includes data concerning gender, prior criminal history, familial responsibilities, and other significant factors.

III. CIVIL DAMAGE AWARDS

A number of gender-based assumptions appear to enter into the process by which damage awards are determined in civil cases (*e.g.*, personal injury cases) in Illinois. First, both judges and juries are likely to assume that women should receive higher damages for injuries affecting physical attractiveness than men and that men should receive higher damages for injuries affecting physical strength and capacity for manual labor than women. These assumptions, although gender-based, may in fact reflect disparate burdens and expectations which society is perceived to impose upon women and men.

Second, because of assumptions about women's earning capacity and their tendency to leave the work force, at least temporarily, in order to care for children, the typical female plaintiff is likely to receive a smaller award for loss of future income than is a male plaintiff. The application of this assumption to the individual case may produce a gender-biased award if it does not reflect the facts pertinent to the individual female plaintiff. Such assumptions are also gender-biased because they ignore women's non-market services as homemakers in the calculation of lost income.

Third, trial attorneys appear to make a number of gender-based assumptions which can affect the choice and presentation of witnesses, jury selection, and the ultimate award of damages. Some personal injury lawyers assume, for example, that women are more credible witnesses than men with respect to testimony about pain, both their own and that of others. Female jurors are perceived to be jealous of female attorneys who are too "aggressive" and of female attorneys, litigants, and witnesses who are "too attractive." The gender of an expert witness may also enter into the consideration of whether she should be selected to testify at trial, particularly if the litigation "team" includes other females. These assumptions may impact upon the number of female attorneys and experts selected to participate in the trial of personal injury cases.

Finally, the Illinois Pattern Jury Instructions, which are used in almost all civil cases, consistently use male pronouns to describe parties, witnesses, and litigants. Although attorneys may redraft the instructions to reflect the appropriate genders in a particular case, the exclusive use of the male pronoun represents an institutional use of a gender term which may reinforce and perpetuate gender-biased assumptions.

RECOMMENDATIONS

A. The Judiciary

1. The Illinois Supreme Court Committee on Jury Instructions in Civil Cases should revise the pattern jury instructions for use in civil cases to make them gender-neutral.

2. The Illinois Supreme Court Committee on Jury Instructions in Civil Cases should develop a jury instruction which specifies factors to consider to recognize the economic value of a spouse's work in the family.

3. Judges should manage the environment in their respective courtrooms in such a way as not to exhibit or to tolerate gender-biased attitudes in the conduct of a trial.

B. Court Administration

1. The Administrative Officer of the Courts should undertake a review of the materials used for juror education, both videos and hand-outs, to determine whether these materials should include admonitions that jurors should disregard race and gender in reaching their conclusions.

C. Bar Associations

1. Bar associations should hold seminars for lawyers, arbitrators, and judges which address the economic status of women as workers, mothers and wives.

IV. COURTROOM DYNAMICS

The proportion of the Illinois attorney population which is female has increased from 8% in 1980 to 20% in 1989; and women make up more than 40% of the typical law school student body. However, women continue to be underrepresented in the field of litigation and to have less diverse caseloads than men. This may be the result of the fact that women tend more often than men to practice in institutional settings—government, private industry, and legal aid or public defender work—where litigation is less frequent or the case load less varied. Possibly as a result of this imbalance, women make up only 8% of the judiciary in Illinois, a fact which many attorneys and litigants decry.

Although there are indications that overt discrimination against women in the courtroom is diminishing, there is also evidence that more subtle forms of bias persist, affecting women as lawyers, as litigants, and as witnesses. One-third of the female attorneys responding to a survey which the American Bar Foundation designed and administered reported that they had personally experienced some form of derogatory behavior or remarks which judges directed at them within the preceding 12 months. They reported instances of (1) judges' use of informal address or terms of endearment to female counsel, (2) judges' comments on female counsel's dress or physical appearance, (3) less attentiveness to female counsel's statements than to those of male counsel, (4) judicial comments about the proper role of women, and (5) exclusion of female counsel from camaraderie between judges and male counsel. Survey respondents agreed that incidents of judicial bias placed female attorneys at a disadvantage and had an effect on the interests of the parties. However, in the overwhelming majority of cases, the female attorney did not object to the offending conduct, for fear of an adverse effect on her client's interests.

Incidents of derogatory of demeaning behavior on the part of male attorneys toward female attorneys are far more common than such behavior on the part of judges. Fifty-seven percent of the female attorneys responding to the survey reported that they had experienced derogatory treatment by male litigators during the preceding 12 months. They mentioned, for example, forms of address and remarks that denigrated the professional status of female attorneys, as well as conduct which was simply dismissive of female counsel, such as refusing to acknowledge her presence, interrupting her presentation, or monopolizing the physical area in front of the bench. When female attorney's objected and the judge was present, judges were reported to have intervened in the majority of cases. Much of the derogatory behavior directed at female attorney's by male attorneys, however, took place out of the presence of the judge.

Female litigants and witnesses were also reported to have been subjected to derogatory or demeaning treatment which would not have been directed at their male counterparts. Interestingly, female counsel are apparently even more likely than male counsel to use informal forms of address to litigants and witnesses. Male counsel, however, were reported to be more likely to exhibit inattentiveness to female litigants and witnesses, to note their physical appearance, and to make remarks about their appropriate social roles.

Finally, men and women in the legal profession appear to have very different perceptions of gender bias. There are marked disparities in the percentages of men and women attorneys who report that they have observed differential or biased behavior toward women. One likely explanation is that men simply fail to notice instances of derogatory treatment when they occur, because they are not themselves the victims or because they are not sensitive to bias in its more subtle forms. Men also may interpret certain behavior, such as overly solicitous treatment of female attorneys by judges, as helpful to women, while female attorneys experience it as derogatory.

Nonetheless, the Task Force study reveals that a significant portion of the female lawyer population in Illinois believes that the professional community they have chosen to join has not fully accepted them. Moreover, any differential treatment which women do receive in the Illinois courts is a

cause for serious concern, not only because it may potentially affect the outcome of litigation, but also because it may undermine public confidence in the fairness and impartiality of our institutions of justice.

RECOMMENDATIONS

A. The Judiciary

1. The Illinois Supreme Court should direct a policy statement to all judges in Illinois, declaring that all forms of bias, including gender bias, have no place in the courts of Illinois.

2. The Illinois Supreme Court should mandate that training directed to issues of gender-biased conduct by both judges and attorneys be a component of judicial education programs.

3. Judges, who are responsible for the management of their courtrooms, are also responsible for ensuring that gender bias play no role in the courts.

4. As part of their responsibility to ensure that attorneys and litigants are treated fairly in the courts of Illinois, the presiding and chief judges in each district should take a leading role in preventing gender bias from playing any role in the courtrooms within their jurisdictions.

5. The presiding and chief judges should be responsible for becoming aware of gender bias issues in their jurisdictions and should take appropriate action when they become aware of a problem.

6. All judges should be models of unbiased behavior in their own conduct at the bench, at sidebar, and in their chambers.

7. Judges should take care to intervene whenever they see an instance of gender bias by an attorney.

8. Judges should exercise whatever control they have over non-judicial court personnel, to ensure that gender bias does not enter into those employees' conduct toward female attorneys or litigants.

B. Bar Associations

1. The Illinois State Bar Association, Chicago Bar Association, and Women's Bar Association, in conjunction with the Illinois Supreme Court, should establish an ongoing committee composed of representatives of each organization, a judge designated by the Supreme Court, and a law school representative to oversee implementation of the recommendations contained in the Task Force Report.

2. The bar associations should issue a policy statement that gender-biased conduct by attorneys is unacceptable and unprofessional behavior.

3. The bar associations should highlight the Task Force Report and recommendations during 1990-91

4. The bar associations should include attention to issues of gender bias as a component part of all continuing legal education courses.

5. The bar associations should also provide educational activities which focus on values and social policy, including the problem of gender bias in courtroom interactions and in law firms.

6. The bar associations should encourage and assist women and members of minority groups to seek judicial appointments and election.

7. Bar association committees charged with evaluating candidates for judicial office should be sensitive to issues of gender bias.

8. Bar asociations which interview judicial candidates in the course of evaluating them should probe those candidates' understanding of and sensitivity to issues of gender bias.

C. Court Administration

1. In selecting personnel, setting personnel policies, and exercising control over nonjudicial court personnel, the Administrative Office of the Illinois Courts should pay attention to issues of gender bias.

2. The clerk's offices in each district should review and revise the court forms used in their respective areas, in order to eliminate the use of gender-biased language in them.

D. Law Schools

1. Issues of gender bias should be included in law school curricula, not only in legal ethics courses but in other courses as well.

2. Law school professors and deans should be especially sensitive to issues of gender bias and serve as role models for the profession in this respect.

E. Courtwatcher Groups

1. Courtwatcher groups should educate themselves about gendcr bias issues and should report incidents of gender bias which their members observe to the courts.●

ENVIRONMENTAL POLICY MUST BE GUIDED BY SCIENCE

● Mr. MOYNIHAN. Mr. President, if there has been one point that I have tried to make as a member of the Committee on Environment and Public Works, it is this: environmental policy must be guided by science.

Recent accounts would indicate that the process of making environmental policy may yet be moving in this direction. This past Wednesday, September 26, 1990, Environmental Protection Agency Administrator William Reilly delivered an address before the National Press Club on the occasion of the release of a report by the EPA Science Advisory Board entitled, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection."

What the report tells us, and what Administrator Reilly emphasized, is most significant. Put simply, the Advisory Board recommends that we rank our environmental problems on the basis of risk, and regulate accordingly. Risk to be determined by rigorous, hard, sound science.

I do feel that the very suggestion of such a change in policy is worthy of my colleagues' consideration and attention. To that end, I ask unanimous consent that a copy of Administrator Reilly's speech and related Science article be inserted in their entirety into the RECORD.

The material follows:

[From Science, Aug. 10, 1990]

COUNTING ON SCIENCE AT ERA

(By Leslie Roberts)

William Reilly, the Administrator of the Environmental Protection Agency, and his top advisers are plotting a quite revolution. They have embarked on a process that could fundamentally change the way EPA does business; an attempt to focus the agency's resources on the environmental problems that pose the biggest risks rather than those that have attracted the most political attention. "It's an effort to inject science more prominently into the policy process," says Hank Habicht, deputy administrator of the agency and Reilly's right-hand man.

That may not sound revolutionary, but Reilly is trying to reverse nearly 20 years of piecemeal environmental policy-making. Congress, reflecting public concerns, has written numerous laws instructing EPA to deal with individual environmental problems—hazardous waste one year, toxic substances or pesticides another, and medical wastes still another. The results: EPA's budget and priorities have been shaped more by "what the last phone call from Capitol Hill or the last public opinion poll had to say" than by a scientific assessment of risk, says Frederick Allen of EPA's office of policy analysis.

Now, Reilly has asked his Scientific Advisory Board to tell him which problems pose the biggest environmental or public health threats. The board's analysis, a draft of which has been obtained by Science, reveals that the environmental problems that dominate public concerns—and EPA's budget—are often not those that Reilly's scientific advisers deem the biggest threats (see table below). Radon and climate change, for example, are at the top of the list for EPA but near the bottom in the public's view.

But turning the agency around would be no mean feat, and even within EPA, opinion is divided on whether Reilly can pull it off. Without question, he starts with several strikes against him. For one thing, the EPA administrator has very little discretion in allocating funds: most of the agency's budget is needed to just to implement the major environmental laws, like Superfund, already on the books. And for another, Reilly faces inertia from within EPA, a bureaucracy that has a vested interest in maintaining the status quo. And then there is the public, which EPA is beholden to, whether or not it agrees with the latest scientific study. Reilly's new effort is "laudable," says Richard Morgenstern, director of the office of policy analysis and an old hand at EPA. "I am bullish on it. But I wouldn't bet the store on it."

But Terry Davies, assistant administrator for policy, planning and evaluation and one of the architects of the new plan, voices no doubts. "We're already doing it," he exclaims. "We are changing the way the agency thinks." But not even the optimists expert major shifts overnight. Deputy adminstrator Habicht, for instance, talks about "a rapid evolutionary change, not a revolutionary one," but he is convinced that it will be a different agency—if they can pull it off.

The new effort actually had its origins before Reilly came to EPA, in a much discussed 1987 report, Unfinished Business. In that time, EPA staff tried, for the first time, to take a broad look at all the environmental problems the agency deals with and figure out which pose the greatest risk to human health and the environment. Risk ranking, per se, was nothing new—people often ranked one air pollutant against another, for example. And EPA had even attempted to rank the cancer risks within small geographic areas, like Philadelphia and Silicon Valley. But this was different: it was an attempt to look at toxic air pollutants versus pesticides versus global warming.

The task proved to be a methodological nightmare, given the paltry data, uncertain techniques, and value-laden questions such as how to rank loss of wetlands against, say,

visibility degradation. But Morgenstern, who directed the study, and 75 senior staff plunged in nonetheless using whatever data they could muster and falling back on professional judgment when they couldn't. They ended up with a list of 31 problems, essentially in rank order. To their credit, they never pretended scientific rigor; they never claimed, for instance, that problem number 2 was definitely worse than problem 3, but said that it was certainly worse than 13, and 13 in turn was worse than 26.

Their list showed that the old assumptions were wrong. Many of the things that the public was most concerned about—and that EPA was devoting vast resources to—like hazardous waste and underground storage tanks, posed relatively small risks, while the biggest problems, like radon and climate change, were being virtually ignored. In 1987 the agency was spending several billion dollars for waste cleanup, for example, as opposed to several million for indoor air pollution and climate change.

"*Unfinished Business* revolutionized how people thought," says Jonathan Lash, a former environmental activist with the Natural Resources Defense Council who is now the secretary of natural resources in Vermont.

But while *Unfinished Business* may have changed thinking, it didn't change practice much at EPA, mostly because "you don't turn a tanker on a dime," says Morgenstern. Its impact was also limited by the fact that many in the agency saw the study as an "unscientific" first cut—not the kind of hard analysis on which to force a change in environmental policy.

But the study did influence Reilly. Soon after he was appointed but before he was confirmed as EPA administrator, Reilly was sitting around the World Wildlife Fund/Conservation Foundation headquarters with his colleagues, including Terry Davies and Dan Beardsley, a deputy assistant administrator for policy at EPA who was then on loan to the conservation group, talking about what he should do at EPA, and how. All were frustrated with the "chemical of the month" phenomenon and the sense that EPA was not spending its money as wisely as it could, recalls Davies. They wanted to find a way to focus the agency's resources where they would get the biggest payoff—which means, as Davies says, factoring in not only how risky a problem is but how feasible and costly the various "fixes" are.

They decided upon a two-part strategy: take another look at *Unfinished Business* and the whole issue of comparative risk; and at the same time, get the senior managers at EPA to start thinking about what actions would have the biggest payoff in terms of reducing the most significant problems.

Reilly wasted little time. Soon after he arrived at EPA he asked the agency's Scientific Advisory Board (SAB) to essentially peer review *Unfinished Business*—to go over the data again, see whether they agreed with the methodology and rankings, and, if not, to come up with their own. The board set up a committee of 45 experts, mainly scientists but a few people from state government as well, like Vermont's Johathan Lash and Fred Hansen, director of Oregon's Department of Environmental Quality, to keep the effort focused on political reality. Lash and Raymond Loehr, an environmental engineer at the University of Texas, Austin, cochair the committee.

That committee, in turn, divided itself into three subcommittees: one headed by William Cooper, an ecologist at Michigan State University, to look at ecological, economic, and aesthetic effects; another, headed by Arthur Upton, director of the Institute for Environmental Medicine at New York University Medical Center, to look at health risks; and a third, chaired by Alvin Alm, director and senior vice president of Science Applications International and a former deputy administrator of EPA under William Ruckelshaus, to look at strategies for reducing the major risks.

The SAB committee spent more than a year sifting through studies, all the while bemoaning the scanty data and uncertain analytical techniques, which make accurately characterizing a risk, much less ranking it against another, a tenuous business at best. Though they applauded Unfinished Business for its pioneering work, the committee had lots of problems with it, from the fact that the EPA staff had divided up the universe into problem areas that essentially reflect the agency's existing programs—which "makes no damn scientific sense," says Cooper—to some of its conclusions, which they call "provisional."

But for all their complaints, the SAB committee concluded that Unfinished Business was not that far off in its conclusions. Most of the "baddies" identified in the report—like climate change, stratospheric ozone depletion, air pollution, and radon—still looked bad. The earlier group had, however, overlooked a couple of big ones, habitat destruction and species extinction, which the SAB committee added. And once again, the things the public cares the most about, like hazardous waste, ended up in the middle or at the bottom of the heap.

Not everyone in the group, however, was willing to follow their predesesors out onto a scientific limb and actually rank the problems. Cooper's ecological effects group was perfectly willing to rank them, but Upton's health effects group wasn't, which led to some tussles on the committee. In the end, they agreed to simply list the 11 problems that everyone agreed were high risk—with the caveat that this is not an inclusive list.

Some of these problems, like the loss of biodiversity, do not fit handily into EPA's statutory mandate, but the committee urged EPA to exert leadership anyway. The committee also urged EPA to give greater weight to ecological risks, which they say have been given short shrift while EPA has concentrated on combating pollutants that pose a threat to public health. And perhaps most important, in terms of the agency's overall direction, the SAB committee gave its scientific seal of approval to comparative risk assessment, flawed as it is, as the best way to set priorities. They recommended that EPA set up a permanent process for comparing risks and then make its policy and budgetary decisions, as much as possible, on the basis of those risks. And they said, EPA should move beyond the conventional "end-of-the-pipe" approach and use alternatives, such as pollution prevention and market incentives.

The committee's final report will go to Reilly in late September. At this stage, it is not at all clear how the public and the environmental community will receive it because in the Reagan era, at least, "setting priorities was a euphemism for cutting," says Johathan Lash. "I don't see that happening here," he adds.

But Reilly and his aides have already embraced the report; in fact, they are using it in shaping the agency's 1992 budget. Their problem, of course, is that 80% of the budget is essentially cast in stone, estimates Dan Beardsley of the policy office. EPA must spend these dollars implementing the laws, paying salaries and rent, and so on. The administrator technically has discretion over perhaps 15% of the budget, but in reality, that too is sacrosanct. "You would be out of your political mind to exercise it," says Beardsley, since Congress has clearly indicated, if not insisted on, how that money ought to be spent.

That leaves only 5% of the budget that is truly flexible. While working to wrest more discretion and more flexibility from Congress, Reilly's aides are concentrating on that 5%. Last November, Reilly and Habicht asked the heads of the various programs to submit 4-year plans, describing where they want to go and how they are going to get there. The guiding principle, they were told, should be risk reduction—and not, say, how to meet the latest court-ordered deadline. In identifying the big risks, the program heads were to take direction first from Unfinished Business, and then, when it became available, the SAB report.

By all accounts, the first round "engendered grave suspicions," as Don Barnes, director of the SAB, puts it. "Any time a program is challenged, people wonder if the real goal is to take money away," he says. The plan did cause some resentment, concedes Habicht. But after some initial grumbling most, if not all, have come around.

But if this new thinking is really going to make a difference—if Reilly is really to get the greater flexibility and discretion he wants—then he and his aides will have to change the culture not only at EPA but in Congress and the Office of Management and Budget. Proponents of the effort point to some encouraging signs from Congress, such as rising budgets for global climate change and radon, while funding for hazardous waste has remained relatively steady.

"It is a big agenda, but you have to start somewhere," says Habicht. "We are planting seeds, most of which won't bear fruit until after we have left."

EPA'S TOP 11 (NOT IN RANK ORDER)

Ecological Risks: Global climate change; Stratospheric ozone depletion; Habitat alteration; Species extinction and biodiversity loss.

Health Risks: Criteria air pollutants (e.g. smog); Toxic air pollutants (e.g. benzene); Radon; Indoor air pollution; Drinking water contamination; Occupational exposure to chemicals; Application of pesticides; Stratospheric ozone depletion.

Scientists and the public draw different conclusions about the seriousness of various environmental problems. Above: the worst environmental problems, as identified by EPA's Scientific Advisory Board. Right: the public's top concerns, as reflected in a March 1990 Roper Poll. (Figures in parentheses are the percentages that rated each problem "very serious;" highlighted items also appear on EPA's list.)

PUBLIC CONCERNS (IN RANK ORDER)

1. Active hazardous waste sites (67%)
2. Abandoned hazardous waste sites (65%)
3. Water pollution from industrial wastes (63%)
4. Occupational exposure to toxic chemicals (63%)
5. Oil spills (60%)
6. Destruction of the ozone layer (60%)
7. Nuclear power plant accidents (60%)
8. Industrial accidents releasing pollutants (58%)
9. Radiation from radioactive wastes (58%)

10. Air pollution from factories (56%)
11. Leaking underground storage tanks (55%)
12. Coastal water contamination (54%)
13. Solid waste and litter (53%)
14. Pesticides risks to farm workers (52%)
15. Water pollution from agricultural runoff (51%)
16. Water pollution from sewage plants (50%)
17. Air pollution from vehicles (50%)
18. Pesticide residues in foods (49%)
19. Greenhouse effect (48%)
20. Drinking water contamination (46%)
21. Destruction of wetlands (42%)
22. Acid rain (40%)
23. Water pollution from city runoff (35%)
24. Nonhazardous waste sites (31%)
25. Biotechnology (30%)
26. Indoor air pollution (22%)
27. Radiation from x-rays (21%)
28. Radon in homes (17%)
29. Radiation from microwave ovens (13%)

RANKING THE RISKS PROVES CONTENTIOUS

If the deliberations of EPA's Scientific Advisory Board committee are any indication, then ranking environmental risks, as William Reilly is proposing to do, will not be easy. Indeed, the committee members almost came to academic blows over just how far they were willing to go on admittedly squishy data. The scientists fell out basically along subcommittee lines, with the ecological group taking a bolder or more foolhardy stance, depending on your perspective. But this says as much, if not more, about the personalties of the two subcommittee chairmen as it does about the nature of the problems they were wrestling with.

William Cooper, an ecologist at Michigan State who headed the subcommittee looking into ecological effects, dove right in. His group discarded the methodology of the earlier report, Unfinished Business, as unscientific and divided up the universe in a new way, and then promptly ranked the problems. His group came up with a complex set of matrices for evaluating risk, but the bottom line, says Cooper, is that problems are worse if they affect a broad area and have a long "time horizon"—in Cooper's words, a measure of how long it takes, once you shut off the stress, for the ecosystem to recover. According to their new scheme, global climate change and stratospheric ozone depletion came out way on top, as they did in Unfinished Business, and so did two other problems the earlier biodiversity toxics, toxics in surface water, and pesticides and herbicides.

While Cooper's group bulldozed through the uncertainties, a subcommittee on health effects, headed by Arthur Upton of the Institute for Environmental Medicine at New York Univesity Medical Center, got bogged down early on in the problems of missing data and inconsistent assumptions. The upshot was they declined to rank anything. "It was not scientifically feasible. It was more than a committee of scientists could do on a part-time basis over a few months," says Upton, especially since they were given the unenviable task of somehow combining cancer and noncancer risks. Instead, they laid out in great detail how one would go about ranking risks in a scientifically defensible way, if one had the time and money to do so. And central to that, they say, is separating out individual agents, like lead, instead of lumping it in with other "criteria air pollutants."

Their cautious stance was immensely frustrating to some committee members, like Jonathan Lash, secretary of natural resources in Vermont, and Fred Hansen of Oregon's Department of Environmental Quality, who pointed out that EPA and State agencies do not have the luxury of waiting for the definitive study but have to make decisions now. But Upton sticks to his guns. "In many cases, we simply don't have the data, either on human exposure to various agents or their toxicity." Upton recently chaired the National Academy of Sciences report, known as BIER V, which wrestled over the effects of ionizing radiation. "When you turn to chemicals, the information is even more incomplete," says Upton. "Unless one gets more data, these assessments will remain highly uncertain, Sure, one can rank risks, but the confidence one has in the rankings will not be great." And though Upton thinks comparative risk assessment is a good tool for setting priorities, he cautions that "you can carry it to absurd extremes."

The committee reached a compromise of sorts, with Upton's group identifying seven problems that would rank high by almost any reckoning: criteria air pollutants (for example, smog), toxic air pollutants (for example, benzene), radon, other indoor air pollutants, drinking water, worker exposure to chemicals, and worker application of pesticides. And though the data were "less robust," they threw in stratosphereic ozone depletion as well, because it looms so large compared with other problems. For all of these high-risk problems, the common denominator was direct exposure, says Upton, not something passed up through the food chain.

Upton cautions that this is not the final word; other problems—such as pesticide residues in food or exposure to consumer products, which were described as high risk in the earlier report—might also rank high if more data were available. But until they are, Upton's committee has "no problem" with Reilly giving extra attention to the seven they have identified.[S02OC0-M1]{S14404}dentified.

AIMING BEFORE WE SHOOT: THE "QUIET REVOLUTION" IN ENVIRONMENTAL POLICY

(Address by William K. Reilly, Administrator, U.S. Environmental Protection Agency)

The Bush Administration is now 20 months old. In two months the Environmental Protection Agency will be 20 years old. My message today is relevant to both milestones.

A year ago I spoke here at the National Press Club. Now, almost midway through President Bush's first term, I propose to take stock of where we are.

I am also here today to share a proposal for a way to begin charting a new course for environmental policy. This new course is suggested by a report that I am releasing today, a report by EPA's Science Advisory Board. In drawing attention to this report I want to stimulate a broad national debate on a fundamentally important question: How can our society, or any similarly developed country, most effectively use its resources to achieve the greatest possible benefits to human health and to the planet that sustains us? The answers to the environmental policy questions we pose today will determine just how green the next decade will be.

KEEPING OUR PROMISES: A REPORT CARD

First, I want to ask you to go back in time a year and a half or so ago. You remember where environmental policy was then.

Clean air legislation had been stalemated in Congress for ten years. Now it is on the point of passage, and I sincerely hope that the Congress will soon send the President a cost-effective clean air bill he can sign.

Acid rain was on the research agenda, but no President had ever proposed to do anything about it. Now Congress is close to approving a ten-million-ton reduction of sulfur dioxide, reducing by half the acid rain precursors, and doing so through a highly innovative and cost-effective new emissions trading system that will allow government to set the goals, and leave utility companies and their plant managers to choose the cheapest ways to achieve them.

Toxic air emissions would come down 70 to 90 percent if the Congress passed the President's air toxics initiative.

These proposals came from President Bush. He broke the stalemate.

President Bush has for nearly ten years been a prophetic and pioneering voice for clean fuels. After years in which we ignored the contribution of fuels to air pollution, the President proposed a new thrust, of requiring clean fuels in our most polluted cities. The debate has been fierce—clean fuels do represent a departure from past policies—but his proposal would significantly reduce air pollution in our cities, and also reduce this nation's dependence on foreign oil imports.

We learned from the great Alar/apple controversy and proposed sweeping new food safety reforms, including measures to reduce by half the time it takes to cancel a bad pesticide. I've said before that this nation suspends trading in a bad stock far faster than it stops sales of a bad chemical. The President proposed legislation to address this defect in our food safety laws, and this Congress should act to achieve this long-overdue reform of our pesticide laws.

We proposed to make it unlawful to ship hazardous waste to any nation with which we do not have an agreement that reassures us the waste will be safely disposed of. And we signed the Basel Convention committing the United States to that policy.

We've proposed a 12 percent increase in the crucial operating fund for EPA, added almost 2,000 more personnel bringing us close to 17,000, and begun to increase by 500 the number of staff working on Superfund enforcement.

I've set a new "enforcement first" priority for Superfund and it's no coincidence that last year we issued more administrative cleanup orders and entered into more settlements for responsible party action than in any previous year. And that pace only quickened further in 1990. Through the third quarter of this fiscal year, we issued 47 percent more emergency administrative cleanup orders than in the same period two years ago, and 16 percent more than in 1989. Civil referrals to the Department of Justice for court action for the same period were also up sharply—71 percent higher than two years ago, and 10 percent higher than last year.

We've made a record steady, far-reaching regulatory decisions, some of which had been pending for ten years: We moved to phase out asbestos use, significantly reduced exposure to benzene, proposed cancelling most food crop uses of the pesticide EBDC, set regulations to reduce the volatility of gasoline, required removal of sulfur from diesel fuel, proposed a rule to recapture evaporation from car engines, and proposed another regulation to make recycling

and source separation a condition of approving new incinerators.

Those are a few of our domestic initiatives. Add to them the President's proposal to plant a billion trees a year for the next ten years and to fund the Land and Water Conservation Fund, zero-budgeted in Administration proposals for years, at $250 million. Then there's the delay in drilling on sensitive offshore oil leases in California and Florida, foregoing a half billion dollars in revenues, in order to ensure a full measure of protection for the environment.

A major thrust of our foreign policy has been to give full expression to the nation's environmental priority. We have accordingly established a new Assistant Administrator for International Activities at EPA. At Secretary of State Baker's invitation, EPA is now part of the annual binational meeting with Mexico and we are working on border issues, proposing to fund construction of a new treatment plant for Tijuana, and advising on Mexico City's air pollution.

In July, I began in Ottawa on the President's behalf the process which will culminate in a new accord with Canada on acid rain and other air pollutants. With this accord we will achieve a long-sought objective, removing the one serious issue in contention from an otherwise congenial relationship. Such an accord, as Prime Minister Mulroney reminded me, has been priority of Canadian foreign policy for 15 years. And we will next move with Canada to give a higher priority to getting the toxics, the pesticides and the fertilizers out of the Great Lakes.

The President proposed a new Center on the Regional Environment of Central and Eastern Europe, and last month I represented him at the opening of this center. Known throughout the region as the Bush Center, this initiative represents a new venture in institution-building for the new East European democracies, and it promises to greatly strengthen the environmental policies of the region's countries—all of which seem to feel they are not totally responsible for the problem, since half their pollution comes from their neighbors.

Incidentially, let anyone who doubts the wisdom of pollution control—or who believes there is a conflict between economic growth and environmental protection—let them go to Eastern Europe. Let them see as I have seen, rivers like the Vistula in Poland, so corrosive it is useless over 80 percent of its length even for cooling machinery; let them experience sulfur dioxide levels in Cracow, where 500-year-old statues and monuments have crumbled in just 40 years; let them see the high rates of infant mortality, lung disorders, worker absenteeism and premature deaths, the vast land areas contaminated by heavy mental pollution. Poland's Environment Minister Kaminsky estimates that environmental contamination represents a drag on Poland's gross national product of 15 percent. Policies in Communist Europe designed to stimulate economic development by foregoing pollution controls ended by wrecking the economy and also ravaging the environment.

More than a year ago the President proposed that the United States fully phase out production and use of chemicals that destroy the world's stratospheric ozone, which functions as a shield against skin cancers and cataracts. In June the United States led the way on an agreement to commit the world community to that policy, and agreed to contribute funds to help the developing countries make the transition to subsitutes for CFC's.

In June of 1989 the President announced a ban on imports of elephant ivory. The European Community and Japan later acted also, and as a result, the price of ivory has plummented and the incentive to kill African elephants is diminished. Some 80 percent of East Africa's elephants fell to the poachers' machine guns in the 1980s; now, there is new hope for the elephants, thanks to a President and Secretary of State who believe in animal conservation.

Just last month the President proposed his Enterprise for the Americas Initiative, including a new readiness to renegotiate public debt owed to the U.S. government by Latin American countries and to apply the interest on the new debt to environmental protection and conservation. Altogether Latin American nations owe the United States some $12 billion in public debt. They owe governments in Europe and Japan another $38 billion. This proposal, which has been very warmly received in Latin America, has gone almost unnoticed here at home. And yet the prospects are that the budgets of parks and pollution and forest agencies can be substantially enhanced as a result of this decision. Should other creditor countries follow our example, this major new debt-for-nature commitment could serve to refocus the priorities of countries so rich in forests and species of plants and wildlife, and so burdened by debt.

Concern for the rapid loss of forests worldwide—new data suggest they are being lost twice as fast as had been believed—that concern led the President to propose an agreement on forestry at the G-7 Economic Summit last July. We hope that agreement will be signed no later than 1992, and will help arrest the destruction of the great forest systems, so many of which will be gone, at present rates of destruction, within 10 to 15 years.

Ah, but what about global climate change? When will you get serious about this issue, I often am asked.

In the first place, there is no question that this President clearly places a very high priority on the importance of the global change issue. Early on, he set up a special group under the Domestic Policy Council to address the issue, directing it to use "the best scientific and economic information available." He asked his Science Advisor, Dr. Allan Bromley, to chair that effort to help ensure that we develop our global change policy and actions using the best expertise available. I can tell you from my own participation on that group that some of the most senior Cabinet officers in our government are working hard to find the best approaches for our country to the challenge of the global change issue.

A number of nations have made ambitous commitments to reduce carbon dioxide emisions, or to arrest their increase by the year 2000. I would encourage the press to ask their leaders how they propose to achieve these reductions. I don't doubt for a moment the seriousness of some of these commitments. But I can tell you that answers to questions about specifics are difficult to come by.

Why? Because large reductions are hard to get without substantial new carbon or energy taxes, and without expansion of nuclear energy. The policies of several European nations will no doubt rely on one or both of these measures, with the French nuclear program filling a critical supply requirement.

And while other talk about ambitious—and perhaps unattainable—carbon dioxide emissions reductions in the future, the United States has been spending hundreds of millions of dollars a year—growing to more than $1 billion in the coming fiscal year—to learn more about the scope, causes, effects, and responses to the problem.

Nor are we sitting on our hands waiting for the science to jell. We already are committed to a series of actions that make sense in their own right and will yield benefits should climate change provc to be, as some have suggested, a problem of serious consequence. (It is also possible, as White House Science Advisor D. Allan Bromley points out in a soon-to-be-published article, that other global issues such as ozone depletion, deforestation and loss of genetic diversity "may * * * turn out to be more serious in terms of human impact than global climate change.")

As as a result of proposals we already have made—several pending in the Congress, others likely to be implemented—the United States should be generating no more greenhouse gas emissions in the year 2000 than we did in 1987. By passing a new Clean Air Act, phasing out CFC's, carrying out the President's "America the Beautiful" reforestation initiative, and promoting energy conservation—if all of these steps are taken effectively—we will reduce greenhouse gas emissions by about 25 percent from their projected levels in the year 2000.

Finally, the President has offered to host the opening session of international negotiations next February on a climate change framework convention.

So the next time you feel the urge to write about climate change, you might consider the question: "How many other countries can point to real action on this issue—and back it up?" How many others have laid before the public the details—if these even exist—of how they plan to cut greenhouse gas emissions while maintaining economic growth?

In total, by any objective measure, this Administration is serious, determined, and dedicated to the pursuit of an aggressive, innovative environmental agenda. Public expectations are high, and we have probably raised them further. President Bush has moved the environment from the margins to the mainstream. As a result, the opportunities for genuine environmental progress have never been greater than they are today.

THE COST OF A CLEAN ENVIRONMENT

At the same time, we in this Administration are profoundly conscious of the need to achieve continued environmental progress in harmony with the nation's economic aspirations. The Administration's policies are firmly grounded in the recognition that we do not have to choose between a healthy environment and a healthy economy. We can, and must, have both.

Our country's environmental gains over the past two decades—in cleaner air and water, in strict controls on hazardous waste, in protection of wildlife and valuable ecosystems—have not come cheaply. Our economists are now working on a report entitled, "The Cost of a Clean Environment," showing that total annual costs for pollution control in the United States, in 1986 dollars, went from $27 billion in 1972 to $85 billion in 1987. This is slightly more than any other Western industrialized nation for which we have data. For this year, we estimate that the public and private sectors are spending