they are not burdened with the responsibility and debt of the obligations of our generation.

What does a national debt of $5.7 trillion cost us? Literally, we collect $1 billion a day in Federal taxes from individuals, families, and businesses to pay interest on old debt. That is $1 billion a day that isn't being spent to put a computer in a classroom or to make America's national defense any stronger. It is $1 billion a day which instead is being spent for interest on old debt.

Many of us believe if we truly are at a time of surplus, this is the moment we should seize to pay down that national debt, bring it down as low as we can conceivably bring it so that future generations and our kids and grandkids won't be burdened with this debt and responsibility.

As you pay down the national debt, the competition for money in the marketplace is reduced. The Federal Government is not out there borrowing and servicing debt. Therefore, interest rates tend to come down. Now not only will we be taking the burden off of families who pay $1 billion a day for interest on the old debt, we will also be reducing the interest rates they pay on their homes and their cars and their credit cards. Families win both ways.

Ultimately, this is as good, if not better, in many respects, as a tax cut. It reduces the cost of living for real families facing real difficulties.

Let me speak for a moment about the tax cut itself. There are a variety of ways we can approach this tax cut. Some have suggested cutting marginal rates. That is a shorthand approach to a tax cut which would, in fact, benefit some of the wealthiest people in this country more than working families and middle-income families. That is where I have some difficulty.

I know what is going on in my home State of Illinois now. I know because my wife called me a few weeks ago and said: I just got the first gas bill for the winter. You will never guess what happened. It is up to $400 a month in Springfield, IL. It is about a 40-percent increase in my hometown. I hear this story all over Illinois, all over the country—energy bills up 50 percent, natural gas bills up 70 percent. If we talk about tax cuts, we ought to be thinking about families who are literally struggling with these day-to-day bills. Whether it is the need to heat your home or to pay for a child's college education or perhaps for tuition in a school, should we not focus tax cuts on the working families who struggle to get by every single day?

I always express concern on the Senate floor that we seem to have more sympathy for the wealthiest people in this country than for those who are really struggling every single day to build their families and make them strong. If we are going to have a tax cut—and we should—let's make sure the tax cut benefits those families.

I also want to make certain we protect Social Security and Medicare. If as an outcome of this debate we end up jeopardizing Social Security or Medicare, then we have not met our moral and social obligation to the millions of Americans who have paid into these systems and depend on them to survive.

I believe the good news about the surplus should be realistic news. We should understand that surpluses are not guaranteed. We ought to make certain that any tax cut we are talking about is not at the expense of Social Security and Medicare. We should focus the tax cuts on working families to make sure they are the beneficiaries so that they have the funds they need to make their lives easier. That should be the bottom line in this debate.

As I said at the outset, Democrats and Republicans alike believe these tax cuts are going to happen. I believe it is a good thing to do. Let us pay down this national debt. Let us provide a tax cut for the families who need it. Let's make sure we protect Social Security and Medicare in the process.

I yield back my time.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JOHN ASHCROFT TO BE ATTORNEY GENERAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the Ashcroft nomination, which the clerk will report.

The assistant legislative clerk read the nomination of John Ashcroft, of Missouri, to be Attorney General.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President. I am pleased that the Judiciary Committee yesterday evening favorably reported the nomination of Senator John Ashcroft to be the next Attorney General of the United States. I look forward to a fair debate of Senator Ashcroft's qualifications and am hopeful that we could move to a vote on his confirmation this week. It is important that we confirm Senator Ashcroft as soon as possible so that the President has his Cabinet in place and he can move ahead with the people's agenda.

John Ashcroft is no stranger to most of us in this body. We have served with him during his 6 years of service as the Senator representing Missouri, some had worked with him when he was Governor and some others had worked with him when he was the Attorney General of Missouri.

In the Senate, he served on the Judiciary Committee with distinction over the past four years—working closely with members on both sides of the aisle. As a member of the committee, he proved himself a leader in many areas, including the fight against drugs and violence, the assessment of the proper role of the Justice Department, and the protection of victims' rights.

But, having heard the relentless drumbeat of accusation after accusation in recent weeks, I can fairly say, in my view, that there has been an unyielding effort to redefine this man of unlimited integrity. Some have termed the statements made by John Ashcroft, during the nearly four days of hearings in the committee, a ''confirmation conversion''—''a metamorphosis.''

On the contrary. The true metamorphosis of John Ashcroft is in the misleading picture painted of him by narrow left-wing interest groups. In fact, I welcomed them to the committee, and said: We haven't seen you for 8 years. I think there is a lot to be garnered out of that statement.

As my colleagues are well aware, John Ashcroft has an impressive 30-year record of loyal public service as a state attorney general, a two term Governor, and then—of course—as Senator, for the State of Missouri. I should also mention that as Missouri's attorney general, he was so well respected that he was elected by his peers across the nation to head the National Association of Attorneys General, and again as Governor, he was elected by this nation's governors to serve as the head of the National Governors' Association.

That really defines John Ashcroft rather than some of the accusations that have been thrown against him in the Senate.

I have said this before and I will say it again, of the sixty-seven Attorneys General we have had, only a handful even come close to having some of the qualifications that John Ashcroft brings in assuming the position of chief law enforcement officer of this great nation.

The Department of Justice, of course, encompasses broad jurisdiction. It includes agencies ranging from the Drug Enforcement Administration, the Immigration and Naturalization Service, the U.S. Marshal's Service, the Federal Bureau of Investigation, the United States Attorneys, to the Bureau of Prisons. It includes, among other things, enforcement of the law in areas including antitrust, terrorism, fraud, money laundering, organized crime, drugs, and immigration. To effectively prevent and manage crises in these important areas, one thing is certain: we need, at the helm, a no-nonsense person with the background and experience of John Ashcroft.

Those charged with enforcing the law of the nation must demonstrate both a proper understanding of that law and a determination to uphold its letter and spirit. This is the standard I have applied to nominees in the past, and this is the standard I am applying to John Ashcroft here today in my full-hearted support of his nomination to be the

next Attorney General of the United States.

During John Ashcroft's 30-year career in public service, he has worked to establish numerous things to keep Americans safe and free from criminal activities. For example, he has: (1) fought for tougher sentencing laws for serious crimes; (2) authored legislation to keep drugs out of the hands of children; (3) improved our nation's immigration laws; (4) protected citizens from fraud; (5) protected competition in business; (6) supported funding increases for law enforcement; (7) held the first hearings ever on racial profiling; (8) fought for victims' rights in the courts of law and otherwise; (9) helped to enact the violence against women bill; (10) supported provisions making violence at abortion clinics fines non-dischargeable in bankruptcy; (11) authored anti-stalking laws; (12) fought to allow women accused of homicide to have the privilege of presenting battered spouse syndrome evidence in the courts of law. On that point, I should add that as governor, he commuted the sentences of two women who did not have that privilege; (13) signed Missouri's hate crimes bill into law.

I could go on and on. His record is distinguished.

I am getting a little irritated that some even implied that he might be a racist, but all, including the judge for Ronnie White, said they do not believe he is a racist. In fact, he is not. His record proves he is not. I might add that his record proves that he is in the mainstream of our society.

Senator Ashcroft appeared before the Judiciary Committee for two days and answered all questions completely, honestly and with the utmost humility. Over the inaugural weekend, he received over 400 questions. He completely answered these follow-up questions that the Senators both on and off the committee sent to him. He has testified and committed both orally and in writing that he will uphold the laws of the United States, regardless of his religious views on the policy which, within his constitutional duties as a Senator, he may have advocated changing. He understands his role as the chief law enforcement officer of this nation.

Virtually every Senator on the committee and every Senator in this Senate has to admit he has the utmost integrity, honor, dignity, and decency. If that is true, why not give him the benefit of the doubt rather than the other way?

We saw at the four days of hearings that even when he disagreed with the underlying policies, he has an undisputable record of enforcing the laws. This was the case with respect to abortion laws, gun laws, or laws relating to the separation of church and state.

Mr. President, a great number of people have said to me that they are tired of living in fear. They want to go to sleep at night without worrying about the safety of their children or about becoming victims of crime themselves.

As someone who both knows John Ashcroft as a person and who is familiar with his distinguished 30-year record of enforcing and upholding the law, I can tell you that I feel a great sense of comfort and a newfound security in the likely prospect of his confirmation to be our nation's chief law enforcement officer.

Mr. President, as I told my committee colleagues last night, we have served with John Ashcroft, and we know that he is a man of integrity, committed to the rule of law and the Constitution. We know that he is a man of compassion, faith, and devotion to family. We know that he is a man of impeccable credentials and many accomplishments.

Some have charged that we are asking that the Senate apply a different standard to John Ashcroft than other nominees because he was a member of this cherished body. Let me be clear. I am not asking nor advocating that a standard be applied to his nomination that is different than that which is applied to other nominees. I am simply saying that you have worked with him and know him to be a man of his word. He is not the man unfairly painted as an extremist by the left-wing activists who have reportedly threatened Senators in their re-election bids if they vote for his confirmation.

They present a man that none of us really know. They have distorted his record and impugned his character and have exaggerated their case.

I am saying that a nominee, especially one we all personally know to be a man of deep faith and integrity, deserves to be given the benefit of the doubt when he commits to us under oath that he will enforce and uphold the rule of law regardless of his personal or religious beliefs.

Mr. President, that is the benefit we accorded General Reno, President Clinton's nominee 8 years ago. She was pro-abortion, she had said so. She was anti-death penalty, she had said so. On both of these issues, among others, she had a totally different ideological view than almost all of the Republican Senators serving at the time. But she committed to uphold the laws of the land, regardless of her personal views. and we accorded her the benefit of the doubt which I believe President Bush's nominee similarly deserves, especially since we all know him.

I ask that we evaluate this man based on his record, his testimony, and based on your personal experiences with him. We know John Ashcroft is not an extremist. That is the image of him that has been painted through a vicious campaign by a well organized group of left-wing special interest activists.

They have a right to be active. They have a right to complain. They have a right to find fault. They have a right to present their case. But they do not have a right to impugn a man's integrity, or distort his record, which I think they have done.

Sometimes in life, though, the measure of a person is best seen in times of adversity. So it is with John Ashcroft who, after a difficult battle for something that meant a great deal to him—re-election to the Senate—resisted calls to challenge the outcome of that election. His own words during this difficult time say it best:

> Some things are more important than politics, and I believe doing what's right is the most important thing we can do. I think as public officials we have the opportunity to model values for our culture—responsibility, dignity, decency, integrity, and respect. And if we can only model those when it's politically expedient to do so, we've never modeled the values, we've only modeled political expediency.

Contrary to what a few special interest groups with a narrow political agenda would have us believe, these are not the words of an extremist or a divisive ideologue. These are the words of a fine public servant who is a man of his word and of faith and who is willing to do the right thing, even when it means putting himself last.

Mr. President, John Ashcroft, like many of us, is a man of strongly held views. I have every confidence, based on his distinguished record, that as Attorney General, he will vigorously work to enforce the law—whether or not the law happens to be consistent with his personal views.

Mr. President, As I asked my colleagues in the Judiciary Committee, I ask that in keeping with our promise to work in a bipartisan fashion, we reject the politics of division. If we want to encourage the most qualified citizens to serve in government, we must do everything we can to stop what has been termed the politics of personal destruction. This is not to say that we should put an end to an open and candid debate on policy issues. Quite the contrary: our system of government is designed to promote the expression of these differences and our Constitution protects that expression. But the fact is that all of us both Democrats and Republicans, know the difference between legitimate policy debate and unwarranted personal attacks promoted—and sometimes urged—by narrow interest groups.

Mr. President, let me cite just one example of what I mean by the narrow interest group campaign of personal destruction. Many may have read, hopefully with disbelief and dismay, a New York Times report, the day following the release of the transcript of Senator Ashcroft's speech at the Bob Jones University, which read, ''the leader of a major liberal group opposing Mr. Ashcroft's nomination expressed disappointment that the comments were not much different from those many politicians offer in religious settings.'' The piece continued, quoting this ''leader'' as saying '''[t]his, clearly, will not do it,' this person said of hopes that the speech might help defeat the nomination.''

Let me note that some opponents have charged that Senator Ashcroft's answers at the hearing and his written answers to the approximately 400 questions sent to him by Judiciary Committee members were evasive. Wrong.

I don't know of any case where we had that many questions of a Cabinet official. Usually it is an insignificant number.

Throughout, Senator Ashcroft has consistently and persuasively responded that he will enforce the law irrespective of his personal views. His long and distinguished record in Missouri supports his commitment to follow and observe the rule of law. But that record is ignored by his critics.

For some of those looking to oppose him, he simply cannot do anything right. When he answers questions in detail to attempt to explain his record, he's termed evasive because he should have simply answered ''yes'' if he really meant it. When he answers a question with a simple and straightforward yes, he's accused of not confronting the issue completely.

Let us be clear. John Ashcroft is strongly pro-life. He always has been as far as I know, and I expect he always will be. He is a deeply religious man—he always has been as far as I know, and I expect he always will be. He has strenuously committed to a policy of equal justice and opportunity for all—and has a long record which supports this commitment of these matters. But he opposed Mr. Hormel for an ambassadorship, as did a number of his colleagues; he opposed Bill Lann Lee, as did eight other Republicans on the Judiciary Committee, including myself; and he opposed Justice Ronnie White. This is the record upon which many paint John Ashcroft as a right wing extremist. I disagree.

Let me simply conclude by repeating the words of John Ashcroft which I cited earlier. ''Some things are more important than politics, and I believe doing what's right is the most important thing we can do.'' I only hope that my colleagues will heed these words as they consider their vote in the Senate. I urge my colleagues to vote yes on this nomination.

By the way, I am urging my colleagues to do what we did for Attorney General Reno: Give John Ashcroft the benefit of the doubt instead of taking the exact opposite tack, of which I think I have seen enough evidence. When Attorney General Reno came up, there were 2 days of hearings. In fact, there was only 1 day for Attorney General Dick Thornburgh. There were only 2 days for Attorney General Bill Barr, only 2 days for Janet Reno. In none of those cases did we allow right-wing groups to come in and attack the witness. We allowed them to submit statements, but we didn't go on and on trying to destroy the reputation of really good people. John Ashcroft is really good people. He is a decent, honorable, religious, thoughtful, kind man who has a reputation of being fair and honest. I personally resent those who try to say otherwise and try to impugn that reputation.

The ACTING PRESIDENT pro tempore. The Senator from Vermont, Mr. LEAHY.

Mr. LEAHY. I appreciate the comments of my friends from Utah and the distinguished chairman of the Senate Judiciary Committee. He suggests a lot of questions were asked of Senator Ashcroft. I read today in the Wall Street Journal, a newspaper that has strongly backed Senator Ashcroft, they believe we didn't ask enough questions, especially concerning fundraising activities by Senator Ashcroft.

I ask unanimous consent that the article from the Wall Street Journal be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. BUNNING). Without objection, it is so ordered.

(See Exhibit 1.)

Mr. LEAHY. Mr. President, when we talk about the time involved in a nomination such as this, I recall the last controversial nomination for Attorney General we had when the Republicans controlled the Senate. That was for Edwin Meese. It took considerably longer, with far more witnesses and questions than we are having in this debate. We sometimes forget the history of what goes on here.

This is a case where the White House actually sent Senator Ashcroft's nomination to the Senate on Monday—Monday of this week, 2 days ago. We are having the debate on the floor today. Prior to the President's inauguration, the Democrats controlled the Senate. We moved forward even without the paperwork or anything else from the incoming transition team. We moved forward to speed up a hearing on Senator Ashcroft.

Today we begin the debate on the floor, after the Judiciary Committee debated the nomination yesterday and voted yesterday evening. As I said, I convened 3 days of hearings on this nomination over a 4-day period from January 16 to January 19. That was prior to having received all the paperwork on Senator Ashcroft. We did that to help the new administration. The Republican leadership announced weeks ago that all 50 Republican Senators would vote in favor of the nomination, irrespective of whatever came out of those hearings. I am glad that other Senators declined to prejudge the matter.

Actually, the Committee on the Judiciary has done the best we could to handle this nomination fairly and fully. We have had hearings, I think, that make all members of the committee and the Senate proud. I have served in this body for 26 years. I believe very much in the committee system. I believe very much in having real hearings and then having a record available for Senators.

In fact, we actually invited Senators who had served in the 106th Congress and were going to leave the committee, as well as some we anticipated would be coming in from both the Republican and Democratic side, to sit in on those hearings. I mention this because we did not actually set the membership of our committee until last Thursday, but we did this ahead of time.

The committee heard from every single witness Senator Ashcroft or Senator HATCH wanted to call in his behalf. This is not a case where suddenly one side or the other was something loaded up. I think there were an equal number of witnesses on both sides. We completed the oral questioning of Senator Ashcroft in less than a day and a half. We limited each Member to two rounds of questions, for a total of only 20 minutes. The nominee was not invited back by the Republicans following the testimony of the public witnesses. As a result, any unanswered questions had to be answered in writing.

We then expedited the sending of written questions to the nominee. We sent the majority of written questions on Friday, January 19, the last day of the hearing, rather than waiting until the following Monday when they were due. Senator HATCH sent out the final batch of written questions on the Tuesday following the hearing.

We received some of what were described as answers to some of the written followup questions sent to the nominee late last Thursday. It is clear from those answers that the nominee has chosen not to respond to our concerns or address many of our questions. In fact, the committee has had outstanding requests to the nominee to provide a copy of the entire videotape of the commencement proceedings in which he participated at Bob Jones University, as has been discussed here on the floor. We have had that request pending since early January. That videotape was provided, incidentally, to news outlets but not to the committee.

I have also requested that the nominee provide a formal response to the allegations that while he was Governor of Missouri he asked about a job applicant's sexual preference in an interview, and we have not received any answer.

There have been references on the floor already today as though there were some kind of left-wing conspiracy to defeat John Ashcroft. I am not aware of that. I have asked my questions as the Senator from Vermont, and I responded to the interests of my constituents, both for and against Senator Ashcroft, from Vermont.

But if there is any question of whether there is influence of anybody on this nomination, I will refer to the New York Times of Sunday, January 7, and the Washington Post of Tuesday, January 2, in which they quote a number of people from the far right of the Republican Party who openly bragged about the fact that they told the new President he could not appoint Governor Racicot of Montana—whom he wanted to appoint—but that he must appoint John Ashcroft.

I mention that because, if anybody thinks this nomination has been influenced by liberal groups, the only ones who have actually determined this nomination and have openly gone to the press and bragged about influencing it are an element of the far right of the Republican Party. They have openly bragged about the fact that they told the incoming administration and President Bush that he could not have his first choice, the Governor of Montana—who is a conservative Republican and now the former Governor—but that he must appoint Senator Ashcroft. That remains a fact. That is why we are here.

Notwithstanding all this, and notwithstanding the fact that the questions have not all been answered, the requested material has not all been sent, we Democrats granted consent to advance the markup date in order to proceed yesterday afternoon and last evening. As the distinguished chairman knows, normally we would have had our debate before the committee today. I said, following his request, that we would not object to moving it up 24 hours. I was told the Republicans have a meeting of their caucus scheduled for later this week and it would accommodate both the new administration and the Republicans in the Senate if we moved that up. I agreed to that. As I said, the Senate works better if Senators can work together. Accommodation, however, does not mean changing one's vote.

We had a good debate in the committee. I think Republicans and Democrats would agree it was a good, solid debate. We reported the nomination to the Senate by a margin of 10–8, a narrow margin. Actually, in most of that debate we had between six and nine Democratic Members present. We usually had three to four Republican Members.

I brought with me the hearing record. Here it is, right here. This is a good, solid record. It is part of the history of the Senate. I wish all Senators would review that record. Many have. Unfortunately, we are not going to have a committee report on this controversial nomination. I think we would have been helped by doing that. There was a time when we did seek to inform the Senate with committee reports on nominations, nominations such as that of Brad Reynolds or William Bennett and a number of important and controversial judicial nominations. We prepared such reports when Senator THURMOND required that as chairman.

In lieu of a committee report, each Senator is left with the task of reviewing the record and searching his or her conscience and deciding how to vote.

I did put into the RECORD a large and I hoped complete brief prepared by me and the lawyers on the Senate Judiciary staff—Bruce Cohen, Beryl Howell, Julie Katzman, Tim Lynch and others—which I think would be very helpful to the Senate.

We may want to consider and contrast the behavior that has been engaged in on the other side. We have talked about the time this may have taken. We had the hearing, we expedited the debate, and we came to the floor. The consideration of the nomination of Attorney General Meese when the Republicans controlled the Senate—with a Republican Senate, one would assume that would move very quickly—that took 13, not days, not weeks: 13 months. And then we had several days of debate in a Republican-controlled Senate before final Senate action.

There was reference to how we how we handled the nomination of Attorney General Reno. That was noncontroversial, and that still took a month from nomination to confirmation. She was not confirmed by the Senate until mid-March in the first year of President Clinton's term. Attorney General Meese was not confirmed by the Senate until late February in 1985, at the beginning of President Reagan's second term. Here we are in January. This nomination was sent to the Senate on Monday, 48 hours ago.

I hope those who advise the President will point out to him these facts so he is not under the impression this nomination has been delayed from Senate consideration. The Democrats, when we controlled the Senate for a few weeks, expedited this. Republicans, when they controlled the Senate at the time of President Reagan, took 13 months to get his nomination of Edwin Meese through.

I have reviewed the hearing record and the nominee's responses to the written followup questions from the Judiciary Committee. I did that before I announced I would oppose John Ashcroft to be Attorney General of the United States.

I have talked to the Senate already about this, and to the committee, about my reasons for opposing the nomination. I expect we will go back to this during the debate.

Let's not lose sight of the historical context in which we consider this nomination. This is an especially sensitive time in our Nation's history. Many seeds of disunity have been carried aloft by winds that come in gusts—especially, unfortunately, from the State of Florida. The Presidential election, the margin of victory, the way in which the vote counting was halted by five members of the U.S. Supreme Court—these remain sources of public concern and even alienation. Deep divisions within our country have infected the body politic. We experienced the closest Presidential election in the last 130 years, probably the closest in our history. For the first time, a candidate who received more votes than were cast for the victor in the last three elections for President, who received half a million more votes than the person who eventually was inaugurated as President—received half a million more votes, I should say, than the man who became President—saw the man who became President declared the victor of the Presidential election by one electoral vote.

I do not question the fact that President Bush is legitimately our President. Of course, he is. I was at the inauguration. We all were. He was inaugurated. Yet, I would hope Senators will realize the concerns in this country: One person gets half a million more votes, the other person becomes President; the one who becomes President after a disputed count in one State becomes President by one electoral vote.

He is President. He has all the powers, he has all the obligations, all the duties of the Presidency, and all the legitimacy of the Presidency. I have no question about that. But I think he has an obligation to try to unite the country, not to divide the country. In fact, 11 days ago, President Bush acknowledged the difficulties of these times and the special needs of a divided Nation. He said:

> While many of our citizens prosper, others doubt the promise, even the justice, of our own country.

He pledged to ''work to build a single nation of justice and opportunity.''

I was one of those who had lunch with the new President less than an hour after his inauguration. I spoke to him and told him how much his speech meant to me. I told him he will be the sixth President with whom I have served. I told him how impressed I was by his inaugural speech. I said he had a sense of history and a sense of country, and I applauded him for it. I do think the nomination of John Ashcroft to be Attorney General does not meet the standard that the President himself has set. For those who doubt the promise of American justice—and, unfortunately, there are many in this country who doubt it—this nomination does not inspire confidence in the U.S. Department of Justice.

My Republican colleagues have urged us to rely on John Ashcroft's promise to enforce the law, as if that is the only requirement to be an Attorney General.

If Senator Ashcroft would have come before the committee and said he would not enforce the law, we would not be debating this issue today. I cannot imagine any nominee—and I have sat in on hundreds of nomination hearings—would say they would not enforce the law. That is not the end of the story. The Senate's constitutional duty to advise and consent is not limited to extracting a promise from a nominee that he will abide by his oath of office. Let me quote what my good friend, Senator HATCH, said on the floor on November 4, 1997, about the nomination of Bill Lann Lee to be Assistant Attorney General for Civil Rights:

> His talents and good intentions have taken him far. But his good intentions should not be sufficient to earn the consent of this body. Those charged with enforcing the Nation's law must demonstrate a proper understanding of that law, and a determination to

uphold its letter and its spirit * * *. At his hearing before the Judiciary Committee, Mr. Lee suggested he would enforce the law without regard to his personal opinions. But that cannot be the end of our inquiry. The Senate's responsibility is then to determine what the nominee's view of the law is.

Like Senator Ashcroft, Bill Lann Lee promised to enforce the law as interpreted by the Supreme Court. He made the promise emphatically, he made it repeatedly, and he made it specifically with respect to certain Supreme Court decisions with which he may have personally disagreed. Despite all of Bill Lann Lee's assurances that he would enforce the law, the Republican-controlled Senate would not allow a vote up or down on the floor on his nomination.

I believe John Ashcroft's assurances that he would enforce the law is not the end of our inquiry. Far more than the Assistant Attorney General for Civil Rights, a job to which Bill Lann Lee was nominated, the Attorney General has vast authority to interpret the law and to participate in the law's development.

Unlike one of his assistants, he has to be held to a higher standard because he sets the policy. The assistant carries out the policy of the Attorney General. The Attorney General's job is not merely to decide whether common crimes, such as bank robbery, should be prosecuted. Of course, they should. Does anybody believe that whoever is Attorney General faced with something as horrendous as the Oklahoma City bombing is going to say, ''I am not going to prosecute''? Does anybody believe an Attorney General faced with a skyjacking or assassination is going to say, ''I am not going to prosecute''? Of course, they are going to prosecute.

But there are many other less spectacular matters, matters that are not in the news every day, where the Attorney General has to decide how the law is to be enforced. The Attorney General has more discretion in this regard than anybody in Government.

The Attorney General advises the President on judicial nominations. He decides what positions to take before the Supreme Court and lower Federal courts. He decides which of our thousands of statutes require defending or interpreting. He allocates enforcement resources. The Attorney General decides whom we are going to sue and, even more importantly, perhaps, decides which cases we are going to settle. He makes hiring and firing decisions. He sets a tone for the Nation's law enforcement officials.

I think it is reasonable to go back and look at how John Ashcroft acted as attorney general before, and I go back to Missouri. Again, he was sworn to enforce the laws and all the laws. So how did he focus the resources of his office? This is how he did it.

He focused the resources of his office on banning abortions and also on blocking nurses from dispensing birth control pills and IUDs. He sued political dissenters, and he fought voluntary desegregation. I am sure with murder cases or anything else such as that he would enforce the law, but it is how he chose to decide which of those discretionary areas to act in that troubles me.

He has used language here describing the judiciary that is disturbing to many. He has shown what Senator BIDEN calls ''bad judgment'' in associating with Bob Jones University and Southern Partisan magazine, and he unfairly besmirched the reputations of Presidential nominees, including Judge Ronnie White and Ambassador James Hormel.

I am particularly concerned that he has not fully accepted what he now calls the settled law regarding a woman's right to choose. His confirmation evolution seems implausible, given his support less than 3 years ago for the Human Life Act, which he now admits is unconstitutional even though he supported it, and his denial of the ''legitimacy'' of Roe and Casey in the 1997 ''Judicial Despotism'' speech, in which he called the Supreme Court ''ruffians in robes.''

I have disagreed with the Supreme Court on some cases, but I have never called them that.

His assurances are totally undercut by the recent remarks of President Bush and Vice President CHENEY. Just 1 day after Senator Ashcroft assured the committee that Roe and Casey were settled law and that he would not seek an opportunity to overturn them, the President said he would not rule out having the Justice Department argue for that result. The Vice President similarly refused to commit himself on this issue over the weekend.

A promise to enforce the law is only a minimum qualification for the job of Attorney General. It is not a sufficient one. It is simply not enough just to say you will enforce the law.

Senator Ashcroft's record does matter in making a judgment about whether he is the right person for this job. Throughout the committee hearings, my Republican colleagues said we should give Senator Ashcroft credit for his public service. I agree with that, just as I give him strong credit and admire him for his devotion to his family and his religion.

At the same time, my Republican friends insist that his record and the positions he has taken in public service do not matter because he will take now a different position as U.S. Attorney General.

President Bush asked us to look into Senator Ashcroft's heart, but we are being urged not to look into his record. I do not doubt the goodness of his heart. I do doubt the consistency of his record.

Some of my Republican colleagues went so far as to argue we should not hear from any witnesses other than the nominee, that we need not review all the nominee's required financial disclosures and his files and his speeches before passing on this nomination. That is not the way we go about our responsibility of advise and consent. Remember, the Constitution does say advise and consent, not advise and rubber stamp.

That is why, as chairman of the Judiciary Committee, during the weeks I held that post, I refused to railroad this nomination through. Instead, I had full, fair, informative hearings to review the nominee's record and positions.

The American people are entitled to an Attorney General who is more than just an amiable friend to many of us here in the Senate and promises more than just a bare minimum that he will enforce the law. They are entitled to someone who will uphold the Constitution as interpreted by the Supreme Court, respect the courts, abide by decisions he disagrees with, and enforce the law for everybody regardless of politics. The way to determine that is to look at the nominee's record, not to engage in metaphysical speculation about his heart.

John Ashcroft's stubborn insistence on re-litigating a voluntary desegregation decree consented to by all the other parties over and over again, at great expense to the State of Missouri and with sometimes damaging disruption to the education of Missouri's children, is relevant. It is relevant because someone who has used his power as a State Attorney General to delay and obstruct efforts to remedy past racial discrimination by the State, and who has then publicly excoriated the judges who ruled against him and made a major political issue of his disagreements with the courts, may use his greater power as the U.S. Attorney General for similarly divisive political purposes.

His effort as a State Attorney General to suppress the political speech of a group with which he disagreed—the National Organization of Women—by means of an antitrust suit is relevant, because it reflects on how he might respond to political dissent as U.S. Attorney General.

His actions as Governor of Missouri and as a U.S. Senator are also relevant. In those offices, he took the same oath of office to uphold the Constitution that he would take as U.S. Attorney General. Yet, in both of those offices, he sponsored legislation that was patently unconstitutional under Roe v. Wade: the 1991 anti-abortion bill in Missouri, and the 1998 ''Human Life Act'' in the Senate. It is highly relevant to ask why, if his oath of office did not constrain him from ignoring the Constitution in those public offices, we should expect it to constrain him as Attorney General. And it is also relevant to ask whether the same John Ashcroft who as a U.S. Senator went around making public speeches calling a majority of the current conservative Supreme Court ''five ruffians in robes'' has the temperament needed to be an effective advocate before that same Court as U.S. Attorney General.

I cannot judge John Ashcroft's heart. But we can all judge his record. Running through that record are troubling, recurrent themes: disrespect for Supreme Court precedent with which he disagrees; grossly intemperate criticism of judges with whom he disagrees; insensitivity and bad judgment on racial issues; and the use of distortions, secret holds and ambushes to destroy the public careers of those whom he opposes.

I cannot give my consent to this nomination.

Mr. President, I will say more, but I see several Senators from both sides of the aisle on the floor. I am going to withhold in just a moment. But just think for a moment, we are a nation of 280 million Americans. What a fantastic nation we are. We range across the political spectrum, across the economic spectrum, all races and religions.

I think of, in my own case, my mother's family coming to this country not speaking a word of English. My grandfathers were stonecutters in Vermont. I look at the diversity of ethnic backgrounds in our family, my wife growing up speaking a language other than English. We have great diversity in this country and, over it all, everybody knowing, whether they are an immigrant stonecutter or whether they are a wealthy Member of the Senate, the laws will always treat them the same; everybody knowing, whether they are black or white, they can rely on the law to treat them the same.

But on top of all that, the Attorney General of the United States represents all of us. The Attorney General is not the lawyer for the President; the President has a White House counsel. In fact, to show the separation, the White House counsel does not require Senate confirmation; he or she is appointed by the President, and that is the choice of the President alone. But the Attorney General requires confirmation because the Attorney General represents all of us.

We hold this country together because we assume the law treats us all the same. When I look at the public opinion polls in this country and see a nation deeply divided over this choice for Attorney General, it shows me that American people do not have confidence in this nomination. I hope, if John Ashcroft is confirmed, he will take steps to heal those divisions, take steps to say he will be the Attorney General for everybody, not just for one group who told the President he had to appoint him. So in that regard, I hope all Senators will think about that.

Mr. President, I will go back to this later on, but I see other Senators on the floor, so I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Jan. 31, 2001]

SENATE PANEL BACKS ASHCROFT DESPITE FUND-RAISING ISSUES

(By Tom Hamburger and Rachel Zimmerman)

WASHINGTON.—The Senate Judiciary Committee narrowly sent John Ashcroft's nomination as attorney general to the Senate floor, even as outside critics complained that his history of aggressive fund raising raises questions about his ability to enforce campaign-finance laws.

The committee's 10–8 vote, with Democrat Russell Feingold of Wisconsin joining the committee's nine Republicans, signaled that Mr. Ashcroft is almost certain to win confirmation from the full Senate later this week. But the panel's sharp division and Senate Minority Leader Thomas Daschle's announcement yesterday that he will vote against his former colleague reflect the strong opposition among Democratic constituencies to Mr. Ashcroft's staunchly conservative record.

Mr. Daschle accused the Missouri Republican of having ''misled the Senate and deliberately distorted'' the record of African-American judicial nominee Ronnie White, leading the Senate to reject Mr. White's nomination to the federal bench. Answering such attacks for the GOP, Judiciary Committee Chairman Orrin Hatch of Utah complained that a ''vicious'' campaign by liberal advocacy groups had left Democratic senators giving Mr. Ashcroft ''not one positive benefit of the doubt.''

One of Mr. Ashcroft's most voluble opponents, Democratic Sen. Edward Kennedy of Massachusetts, indicated that he won't attempt to block the nomination with a filibuster. President Bush urged quick action by the Senate so that his administration could proceed with the organization of the Justice Department, where a number of top department appointments have been held up pending action on Mr. Ashcroft.

''I would just hope there are no further delays,'' Mr. Bush said. ''There's been a lot of discussion, a lot of debate . . . and it's now time for the vote, it seems like to me.''

Actually, the former senator's history of campaign fund raising hasn't been debated much within the Senate. Mr. Feingold, who backed Mr. Ashcroft in yesterday's vote, is one of the chamber's leading advocates of campaign reform. But yesterday, he cited the ''substantial deference'' a president deserves in nominations.

Critics say Mr. Ashcroft has repeatedly pushed at the edges of campaign-finance regulations by using taxpayer-financed office staff to wage election campaigns, and by joining other candidates in both parties in finding loopholes that have allowed him to pursue larger donations than the $1,000-a-person contributions permitted to a candidate's campaign committee.

Those critics, from Democrats in Mr. Ashcroft's home state to representatives of national organizations promoting campaign-finance overhaul, say the lack of attention to the issue reflects how deeply the Senate itself is steeped in the techniques of fully exploiting the campaign-finance system. But at a time when an overhaul bill may soon overcome lingering resistance on Capitol Hill, they say Mr. Ashcroft's record casts a cloud over his commitment to enforce rigorously the laws regulating how political money is raised and spent.

''The Senate has completely failed its obligation to pursue this line of inquiry,'' complains John Bonifaz, executive director of the National Voting Rights Institute, a Boston nonprofit group that specializes in campaign finance and civil-rights litigation.

Mr. Ashcroft's backers on Capitol Hill and in the Bush administration dismiss the complaints as ideologically inspired sniping. Administration spokeswoman Mindy Tucker says Mr. Ashcroft has ''always adhered to the law on campaign-finance issues and his campaign-finance practices have been above reproach.''

Like other senators in both parties, Mr. Ashcroft formed a joint committee with his national party's Senate campaign arm to collect unregulated ''soft money.'' When he was exploring a presidential bid, he went to Virginia, which has few campaign-money limits, to establish a political action committee that accepted a $400,000 donation. ''A blatant evasion of laws that are designed to protect against the kind of corruption the attorney general is charged with upholding,'' complains Scott Harshbarger, Common Cause president.

In one case, Missouri Democrats allege, Mr. Ashcroft went over the line of propriety. It dates to 1982, when Mr. Ashcroft was Missouri attorney general and brought an action against a local oil company for selling tainted gasoline. The company, Inland Oil, countersued, charging that Mr. Ashcroft's actions were motivated by his desire to win election as governor. In a deposition. Mr. Ashcroft's administrative assistant said he worked on Mr. Ashcroft's election campaign while a state employee and contacted potential campaign contributors from his government office.

The lawsuit also noted that Mr. Ashcroft had solicited an executive of Inland Oil for a donation to the state GOP in a fund-raising appeal under the state attorney general's letterhead, and that he personally sought a donation from a barge-company owner who did business with Inland. Mr. Ashcroft has said the mail solicitation was merely sent in his name, and Ms. Tucker says he hadn't known of the barge concern's connection to Inland when he sought a donation.

The state later settled its complaint against Inland Oil, which in turn dropped its counter suit. An opposing legal counsel in that case, Alex Bartlett, says Mr. Ashcroft ''caved'' on the case to avoid answering questions about his fund-raising practices. Mr. Bartlett also says Mr. Ashcroft later exacted retribution by effectively blocking the Clinton administration from nominating him for a federal judgeship in the mid-1990s. Former White House Counsel Abner Mikva says then-Sen. Ashcroft told him in early 1995, ''I don't like'' Mr. Bartlett.

Ms. Tucker rejects that interpretation of events, saying Mr. Ashcroft negotiated an appropriate settlement in the Inland Oil matter. If he later expressed reservations about Mr. Bartlett to Mr. Mikva, she adds, he didn't block him from the bench since Mr. Bartlett was never formally nominated. She also says Mr. Ashcroft never used public employees to perform campaign work except in their off ours.

FUND-RAISING VEHICLES

John Ashcroft has harvested donations, in recent years using these political committees:

Ashcroft 2000: Senate re-election committee raised $8.9 million in ''hard'' money subject to federal limits of $1,000 per individual donation, $5,000 per political action committee.

Ashcroft Victory Fund: Collected $3.8 million unregulated ''soft'' money during 1999–2000, split evenly between Ashcroft 2000 and National Republican Senatorial Committee.

Spirit of America PAC: So-called leadership PAC collected $3.6 million in hard money since 1997, largely to finance Ashcroft's exploration of a presidential bid.

American Values PAC: Virginia-based PAC raised $586,533 beginning in 1998, which financed TV ads in Iowa and New Hampshire.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I appreciate the comments that both Chairman HATCH and Senator LEAHY have just made with respect to this nomination.

We began when I referred to Senator LEAHY as Mr. Chairman, and now we are nearing the conclusion of this during the time that Senator HATCH will be referred to as Mr. Chairman. I agree, it is time to bring the confirmation proceedings for Senator Ashcroft to a close.

I hope my colleagues will consider the long-range implications of their votes with respect to Senator Ashcroft. I have, I think, never regretted voting for a nominee for office, but I have regretted some of the votes I have cast against nominees. I hope my colleagues judge how their votes will be considered a year from now, 4 years from now, perhaps 20 years from now, in thinking about how they will cast their votes.

Most of the points Senator LEAHY made have been made before and have been fairly thoroughly rehashed during the committee process and in other forums. I would really like to only respond to three points Senator LEAHY just made.

First, he made this comment in the Judiciary Committee meeting yesterday, as well. Senator LEAHY said it is not liberal or left-wing groups that have influenced this nomination but, rather, groups on the far right. And it is possible, of course, for anybody to brag about what they may or may not have done. President Bush is fully capable of deciding whom he is going to nominate for Attorney General. I was one of the people who recommended John Ashcroft to him. So I do not think we can ascribe John Ashcroft's nomination to the fact that some people who are very conservative brag about the fact that they stopped somebody else and recommended his nomination. He was recommended by other people as well, including myself.

In any event, I think it is rather odd to suggest that liberal groups have not been actively involved in this debate. Immediately after it began, I received a copy of a special report from the People for the American Way—clearly a liberal, left leaning group—making the case against the confirmation of John Ashcroft as Attorney General. And page after page after page of it, in effect, is opposition research opposing the nomination.

I also will note just one story from the Washington Times of January 17 of this year. I will quote this at length because I think it makes the point rather clearly.

> Senate Democrats are under enormous pressure from liberal interest groups to defeat Mr. Ashcroft, whom they accuse of insensitivity to minorities and of harboring a stealth agenda to undermine abortion rights.
>
> Yesterday, Kweisi Mfume, president of the National Association for the Advancement of Colored People, said his organization will ''fund major information campaigns for the next 4 years'' in States whose senators vote in favor of Mr. Ashcroft.

This is continuing the quotation from Mr. Mfume:

> Senators who vote for Ashcroft will not be able to run away from this and assume people will forget, said Mr. Mfume. For Democratic senators, in particular, this vote comes as close to a litmus test as one can get on the issue of civil rights and equal justice under law from the party's most loyal constituency.

Mr. President, I do not think it really matters much. It is very clear that both liberal and conservative interest groups have weighed in on this nomination. It is totally appropriate for them to do so. Therefore, I am not quite clear why one would make the point that it is only conservative groups who have weighed in. Clearly, liberal groups have weighed in as well. That is their right.

I, in fact, admire those Democratic Senators who will vote to confirm Senator Ashcroft because I appreciate the intense pressure they are under. We all have pressures, but it takes courage sometimes to go against what they may perceive as going against the grain in their own State.

The second point made was that this was a divisive nominee. It is a little hard for me to understand how a nomination can be divisive until somebody objects. President Bush laid out his potential Cabinet, and immediately all attention focused on three of those nominees. They were said to be divisive. They were divisive because somebody objected to them.

Third—and this relates to it—this business about enforcing the law has really put Senator Ashcroft in a difficult position. It is a catch-22 for him; he cannot win, literally.

If he says he will enforce the law, which, of course, every nominee has said, then he is subject to the criticism that this is a change, a new Ashcroft, and we can't believe that he will, in fact, enforce the law. What is he to do? He can't prove a negative. He can't prove he will not fail to enforce the law.

We can look to his experience. We can look to his service in the Senate.

One of our colleagues who will be voting on him made this statement. This is from West Virginia Democratic Senator ROBERT BYRD:

> I'm going to vote for him. He was a legislator. His opinions at that time were the opinions of someone who writes the laws. He is now going to be an officer who enforces the laws. He will put his hand on the Bible. He will swear to uphold the law, that he will enforce the law. He has said so, and I take him at his word. I believe Ashcroft means what he says.

Of course, some have noted that John Ashcroft is a very religious man. Yet it seems paradoxical to me that after referring to his faith, they would somehow doubt that he would be firm in his commitment to uphold the laws. I agree with Senator BYRD. We can trust this man, that he will do what he says he will do.

I will submit for the RECORD just one of the many examples that one can point to about the immediate past Attorney General not enforcing the law; in this case, a situation in which Attorney General Reno specifically refused to enforce the Controlled Substances Act when it dealt with the matter of assisted suicide. Yet I heard nobody who is a critic of John Ashcroft criticize Attorney General Reno for her refusal to enforce existing law.

These are matters of judgment, and reasonable people will differ. That is why it is especially perplexing to me to note the vehemence with which some have expressed opposition to Senator Ashcroft on the grounds that they know he won't enforce the law. That is perplexing to me.

A final point on this—it has been made over and over, but I think it bears a little bit of discussion right now—Bill Lann Lee was a nominee of Bill Clinton for a very important job in the Justice Department, head of the Civil Rights Division. There were many who opposed his nomination, including myself. Senator LEAHY and others have been very critical of our opposition. In effect, they have said we should not have opposed him for that position. We applied too tough a standard; we should have believed him when he said he would enforce the law.

Not getting into all of the reasons why we didn't think he would enforce the law and why, as it turns out, we were correct. Nonetheless, people such as Senator LEAHY have been very critical of us for the stance we took. Yet they are now saying they are going to apply the same test they say we applied in the case of Bill Lann Lee. Either we were wrong in that case and that test should not be applied or we were right and it is a test that can be applied. And they then apply it and perhaps reach a different conclusion than we.

We should discuss this honestly. I don't think you can say on the one hand that test was wrong for Republicans to apply in the case of Bill Lann Lee but it is right for Democrats to apply it in the case of John Ashcroft. Which is it? If it is wrong for us to say we just didn't believe that Bill Lann Lee could do what he said he would do, then the Democrats have a very tough argument to make that they should be able to say precisely that with respect to John Ashcroft.

The bottom line is, it doesn't matter what John Ashcroft says to some Senators. They have reached a conclusion—I will suggest in good faith; I will never question the motives of my colleagues even if they vehemently disagree with me—that he is not suitable to be the Attorney General of the United States. That is their right.

I don't think John Ashcroft can ever satisfy them. He can say: I promise you I will uphold the law, as he did over and over and over again in the hearing. We know he is a man of integrity and no one has questioned that. Yet they still apply this test which, in their minds, requires them to vote against his confirmation. So be it.

We have to be honest about the application of these tests. If it is fair to do it in the case of John Ashcroft, then it

was fair for Republicans to do it in the case of Bill Lann Lee. We simply reached different conclusions. If it was unfair in the case of Bill Lann Lee, then it certainly can be argued to be unfair in the case of John Ashcroft.

People who argue about this ''rule of law'' point would be much more credible if over the course of the last 8 years they would have been more outspoken about the repeated problems of the immediate past administration with respect to the rule of law. They were defending their administration. They were defending their Attorney General and their President. They didn't speak out about these matters.

The rule of law is really at the bottom the most important thing that those of us on the Judiciary Committee can focus on and that we do need to consider when the President has nominees pending on the floor. That is why I am happy to conclude these brief remarks with my view that there is no one whom I believe in more with respect to fulfilling the responsibility to support the rule of law than John Ashcroft, a man of great integrity, a man of unquestioned intelligence and experience—in fact, the most experienced nominee ever for the position of Attorney General—a man who repeatedly was elected by his constituents in Missouri, who had every opportunity to view him as an extremist, if that in fact had been the case, but it was not; and a man who served in this body for 6 years.

During that time, he was a friend of virtually everybody in the body because they knew him, they liked him, they trusted him, and they worked with him. Therefore, it is perplexing and hurtful to me to hear some of the things that have been said about him in connection with his confirmation.

Oppose him if you will; that is your right. Reasonable people can reach different conclusions about whether he should be confirmed. But we need to do it in a civil way so that there is not lasting harm done either to the confirmation process, to the legitimacy of the Senate's actions with respect to confirmation, or to the legitimacy of President Bush and his Department of Justice under the leadership of John Ashcroft.

I urge my colleagues to consider whether in 4 or 5 or 6 years they will be happy with and glad to defend a negative vote on this confirmation. I urge them to consider that carefully.

I am very proud to express my strong support for the nomination of John Ashcroft. He will, in the words of Daniel Patrick Moynihan, make a superb U.S. Attorney General.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, first, I express my appreciation to our chairman and the members of the Judiciary Committee for the way these hearings were held on Senator Ashcroft to be the Attorney General, at that time chaired by our long-time friend and colleague, Senator LEAHY, and also, in terms of the markup, by Senator HATCH. Those who had the opportunity to watch the course of the hearings would understand the sense of fairness and fair play all of us who are members of the committee believe they conducted the hearings with. I am grateful to both of them.

I hope at the start of this debate that we can put aside the cliches and the sanctimonious attitudes we sometimes hear on the floor of the Senate that those of us who have very serious and deeply felt concerns about this nominee somehow are responding to various constituency groups, or somehow these views are not deeply held or deeply valued. I have been around here long enough to know that in many situations, it is very easy for any of us to say those who agree with our position are great statesmen and women, and those who differ with us are just nothing but ordinary politicians who are not exercising their good judgment.

Those are policies or at least slogans which are sometimes used here.

This issue is too important not to have respect for those views that support the nominee as well, hopefully, as those that have serious reservations about it.

Listening to my friend from Arizona talk about the difference between Bill Lann Lee and this nominee, the differences couldn't have been greater. Bill Lann Lee was committed to upholding the law and had a long-time commitment to upholding the law. His statements to the committee confirmed a commitment to uphold the law just like Dr. Satcher and Dr. Foster.

Many of us have serious concerns about this nominee's commitment to the fundamental constitutional rights that involve millions of our fellow citizens in the areas of civil rights, women's rights, privacy, as well as the issues of the Second Amendment, and the treatment of nominees over a long period of time. I think the record will reflect that I find very, very powerful and convincing evidence that the nominee fails to give the assurance to the American people, should he gain the approval, that he will protect those particular rights and liberties of our citizens.

I intend to outline my principal concerns in the time that I have this morning.

Mr. President, two weeks ago the Judiciary Committee heard four days of testimony on Senator Ashcroft's nomination to serve as Attorney General of the United States. We heard Senator Ashcroft—as well as those who support and oppose his nomination—discuss his record.

I found the testimony on civil rights, women's rights, gun control, and nominations very disturbing. As I said then, Americans must be confident that the Attorney General and the Justice Department will vigorously enforce our nation's most important laws and vigorously defend our citizens' most important rights. Neither Senator Ashcroft nor his supporters have been able to provide that assurance.

Civil rights is the unfinished business of America, and the people of this country deserve an attorney general who is sensitive to the needs and rights of all Americans, regardless of color. It is not enough for Senator Ashcroft to say after the fact that he will always enforce the laws fairly. We must instead examine his record as Attorney General of Missouri and as Governor of Missouri and the impact he had on the civil rights of the citizens of Missouri. We must consider whether as Attorney General or Governor of Missouri, Senator Ashcroft tried to advance the cause of civil rights in his state or whether he tried to set up roadblocks. Based on the totality of his record, I must sadly conclude that he did the latter. I am particularly concerned about Senator Ashcroft's testimony on school desegregation in St. Louis. He asserted that the discrimination that segregated the schools of St. Louis was from the distant past and that the state had not actively discriminated since the decision by the United States Supreme Court Brown v. Board of Education in 1954. He made sweeping general statements about having always opposed segregation and supported integration. He made specific claims that he complied with all court orders, that the state was not a party to the lawsuits and that the state had never been found guilty of any wrongdoing.

Those statements and claims are inconsistent with the facts and with his record as Attorney General and Governor of Missouri. I see no plausible conclusion other than that Senator Ashcroft misled the committee during his testimony.

Senator Ashcroft's testimony that state sponsored segregation ended in the 1950s sheds light on his attitude about discrimination and his willingness to turn a blind eye to the disenfranchised. Responding to a list of the state actions that maintained segregated schools, Senator Ashcroft said:

> Virtually none of the offensive activities described in what you charged happened in the state after Brown v. Board of Education. As a matter of fact, most of them had been eliminated far before Brown v. Board of Education.
>
> Secondly, in saying that the city maintained a segregated school system into the '70s, is simply a way of saying that after Brown v. Board of Education when citizens started to flee the city and move to the county . . . the schools, as people changed their location, began to be more intensely segregated. That was after the rules of segregation had been lifted, and it was not a consequence of any state activity.

Senator Ashcroft's testimony, at best, ignored the undeniable facts about school segregation in St. Louis, ignored court rulings, and was very misleading. In fact, far from having eliminated the ''offensive activities'' Senator Ashcroft referred to ''far before Brown,'' Missouri was still passing

new segregation laws in the decade before the Brown decision, going as far as amending its state constitution to require segregation.

In his testimony before the Judiciary Committee, Senator Ashcroft denied that the city maintained a segregated school system into the 1970s. He testified that the schools remained segregated only because whites fled the city. He emphasized that this segregation ''was not a consequence of any state activity.'' Again, this statement is seriously misleading in light of the facts and the court rulings.

The record shows that the response by St. Louis to the Brown decision was what the school board called a ''neighborhood school plan.'' The plan was designed to maintain the pre-Brown state of segregation in the St. Louis schools, and that is exactly what it did.

Reviewing the board's 1954–56 neighborhood school plan, the 8th circuit found:

> The boundary lines for the high schools, however, were drawn so as to assign the students living in the predominately black neighborhoods to the two pre-Brown black high schools. Following implementation of the School Board plan, both of these schools opened with 100 percent black enrollments. the elementary school boundaries were also drawn so that the school remained highly segregated.

The 8th Circuit Court of Appeals went on to make clear that there was no justification, other than perpetuating segregation, for the boundaries chosen:

> The Board could have, without sacrificing the neighborhood concept, drawn the boundaries so as to include significant numbers of white students in the formerly all-black schools. a reading of the record also makes clear, however, that strong community opposition has prevented the Board from integrating the white children of South St. Louis with the black children of North St. Louis.

The board's own documents show that maintaining the status quo of segregation was the intent of the plan, and that the new attendance zones were drawn to reassign the fewest number of students possible. Leaving no stone unturned, the board also made sure that the staffs of the schools remained segregated as well.

The court went on to make clear findings of fact that contrary to Senator Ashcroft's testimony, the board's active segregation of the schools did not end in the 1950s. In fact, the board actively used a student transfer program, forced busing, school site selection and faculty assignments throughout the 1950s, 1970s and into the 1970s to maintain the segregated status quo. In 1962, all 28 of the pre-Brown black schools were all or virtually all black, and 26 still had faculties that were 100 percent black. At the same time, the pre-Brown white schools that had switched racial identities has switched their faculties from white to black also.

Choosing sites for new schools could have helped, but instead was also used to make the segregation even worse. In 1964, ten new schools were opened and were placed so their ''neighborhoods'' would ensure segregated enrollment—all ten opened with between 98.5 percent and 100 percent black students. From 1962 to 1975, there were 36 schools opened—35 were at least 93 percent segregated, only 1 was integrated.

Forced busing was also designed to continue segregation. As late as 1973, 3,700 students were being bused to schools outside their neighborhoods to reduce overcrowding. The vast majority of the black students were bused to other predominantly black schools, while virtually all of the white students were sent to other white schools. Only 27 white students were bused to black schools.

The court of appeals summed up the continuing legacy of discrimination in 1980, in a case that Attorney General Ashcroft had litigated for the state:

> The dual school system in St. Louis, legally mandated before 1954 and perpetuated by the Board of Education's 1954–1956 desegregation plan, has been maintained and strengthened by the actions of the Board in the years since.

All of these numbers and statements are facts according to the federal courts—from federal court cases that Attorney General Ashcroft litigated. Senator Ashcroft knew these facts. He knew them in the 1980s when he tried these cases. He knew them in 1984 when he ran for governor as the candidate who would fight the hardest against integration. And, most important, he knew them when he testified before the Committee.

Senator Ashcroft also gave misleading testimony about his own actions in fighting school desegregation. He claims that he has always supported integration and supported desegregation. But his protracted and tenacious legal fight against desegregation, his failure to make a good faith effort to cooperate with court-ordered desegregation, and his frequent exploitation of racial tension over desegregation during his 1984 campaign for governor suggests otherwise.

Over a four year span as Missouri's Attorney General, Senator Ashcroft fought the desegregation plan all the way to the Supreme Court three times—and lost his bid for review of the 8th Circuit Court of Appeals decisions each time. As attorney general, he lost definitively in the 8th Circuit in 1980, 1982, and 1984. In the 1984 case, it took the court 4 pages just to describe the myriad suits, motions, and appeals Ashcroft filed. And then he appealed that one, too. And during the time that he was filing repeated legal challenges to the desegregation plan, Attorney General Ashcroft proposed no desegregation plan of his own and strongly resisted a negotiated settlement for entirely voluntary school transfers that had been agreed to by the city of St. Louis and St. Louis County. These are not the actions of a man who supports integration and opposed segregation.

In response to questioning by the Judiciary Committee, Senator Ashcroft made this specific claim:

> In all of the cases where the court made an order, I followed the order, both as attorney general and as governor. It was my judgment that when the law was settled and spoken that the law should be obeyed.

One of the simplest and least burdensome orders of the court flatly refutes Senator Ashcroft's claim. In May 1980, the federal district court ordered the state to prepare and submit a proposal within 60 days for desegregating the schools. In a telling example of his unwillingness to support any form of desegregation plan, Attorney General Ashcroft failed to comply with the order. In fact, it wasn't until December 1980 that the State responded at all—other than filing motions to block the order to submit a plan and appealing them all the way to the Supreme Court—and the court did not consider the responses to be a good-faith effort. In 1981, after several more orders and deadlines were missed he was finally threatened with contempt of court for his repeated delays.

Attorney General Ashcroft was not threatened with contempt because he objected to the cost of a particular desegregation plan or because he was aggressively filing appeals. He was threatened with contempt for his failure to comply with the court's 1980 order to submit a plan for integrating the schools. He refused, in effect, to even participate in desegregation at all. Later, instead of being chastened by his brush with contempt for defying the court, he cited it as a badge of honor during his 1984 campaign for governor, as proof of his adamant opposition to desegregation. He publicly bragged that it showed ''he had done everything in [his] power legally'' to fight the desegregation plan.

In fact, as the court had stated in its 1981 order:

> The foregoing public record reveals extraordinary machinations by the State defendants in resisting Judge Meredith's orders. In these circumstances, the court can draw only one conclusion. The State has, as a matter of deliberate policy, decided to defy the authority of the court.

In yet in another attempt to claim that his opposition to the desegregation plan did not mean he was opposed to integration, Senator Ashcroft testified he opposed the plan because the State was not a party to the lawsuit and did not have a fair chance to defend itself. As he stated:

> Well, you know, if the State hadn't been made a party to the litigation and the state is being asked to do things to remedy the situation, I think it's important to ask the opportunity for the State to have a kind of, due process and the protection of the law that an individual would expect.

This claim borders on the bizarre. The state became a party to the case in 1977, the very year that Senator Ashcroft took office as attorney general, and three years before the first 8th Circuit ruling. Throughout his entire eight year tenure, Attorney General Ashcroft litigated this case up and down the federal system on behalf of the State of Missouri. To claim that

the State was not a party to the litigation is a disingenuous and transparent attempt to evade responsibility for his actions.

In some of his court challenges, Attorney General Ashcroft did claim that the State was not a party to the settlement agreement and should not be required to implement it. The truth is that the other parties agreed and submitted a plan to the court. Attorney General Ashcroft had every opportunity to submit his own proposal in fact, he was ordered to do so but he refused. To then claim that he shouldn't have to follow the court ordered plan is tantamount to saying that a guilty party who doesn't want to be punished is somehow beyond the authority of the court. The defense was rightly rejected by the district court and the 8th Circuit and the Supreme Court refused to hear it.

In his testimony, Senator Ashcroft directly, clearly, and repeatedly said that he opposed State liability for desegregation because the State had never been found guilty of the segregation. In his response to questioning from Senator LEAHY, he testified:

> I opposed a mandate by the Federal Government that the State, which had done nothing wrong, found guilty of no wrong, that they should be asked to pay this very substantial sum of money over a long course of years. And that's what I opposed.

This was no slip of the tongue. He repeated the denial of responsibility moments later, saying:

> Here the court sought to make the State responsible and liable for the payment of these very substantial sums of money, and the State had not been found really guilty of anything.

These two statements, made under oath in testimony before the Committee, are flatly wrong and grossly misleading. The St. Louis cases were certainly long and convoluted, but one point is abundantly clear: the courts held that the State of Missouri was responsible for the discrimination. The 8th Circuit left no doubt about the State's guilt and liability for segregating the schools. As the court said in 1984:

> We, again noted that the State and City Board—already judged violators of the Constitution—could be required to fund measures designed to eradicate the remaining vestiges of segregation in the city schools, including measures which involved the voluntary participation of the suburban schools.

This statement by the court highlights a very important point. The court said ''We again noted that the State and City Board—already adjudged violators of the constitution''—were responsible for desegregating the schools. This 1984 decision came four years after the original 8th circuit decision held that the state was in fact responsible for the discrimination.

Senator Ashcroft was attorney general of Missouri for all of those years and was campaigning for governor when the decision was issued. No one knew better than he that the state had been found guilty of discrimination, and had been found guilty repeatedly. Yet he was still denying responsibility before the court in 1984 and it is deeply troubling that he was denying it before this committee in 2001.

I am also deeply troubled by Senator Ashcroft's exploitation of the racial tensions over desegregation to promote his campaign for governor in 1984. The St. Louis Post-Dispatch reported at the time that Senator Ashcroft and his Republican primary opponent were ''trying to outdo each other as the most outspoken enemy of school integration in St. Louis,'' and were ''exploiting and encouraging the worst racist sentiments that exist in the state.'' The Economist, a conservative magazine, reported that both candidates ran openly bigoted ads and that Ashcroft called his opponent a ''closet supporter of racial integration.'' Even the Daily Dunklin Democrat, a newspaper that supported Ashcroft's appeals of the desegregation orders, took him to task for exploiting race in his campaign, criticizing the 1984 primary campaign as ''reminiscent of an Alabama primary in the 1950s.''

Ashcroft claimed in the Judiciary Committee that in opposing the desegregation plan he was merely opposing the cost of the desegregation that was being imposed on the state. But according to press reports of that campaign, Ashcroft repeatedly attacked the courts and the desegregation plan for reasons wholly unrelated to cost, even going as far as calling the desegregation plan an ''outrage against human decency'' and an ''outrage against the children of this state.'' I believe, instead, that it is the repeated, legally unsupportable, vigorous opposition to desegregation, that is an outrage against human decency and an outrage against the children of Missouri.

For these reasons, I have great concern about Senator Ashcroft's testimony and his actions surrounding the entire issue of desegregation. His actions as Attorney General of Missouri leave no doubt that at every turn, he chose to wage a non-stop legal war against integration and desegregation, and that he used the full power of his office to do so.

The question for Senator Ashcroft, and for senators on both sides of the aisle, is how can it mean anything for Senator Ashcroft to say that he will enforce the law against discrimination, when this record shows beyond any reasonable doubt that he will go to extraordinary lengths to deny the facts of discrimination?

Senator Ashcroft's record and testimony on voter registration legislation are equally troubling. In response to a question about his decision as Governor of Missouri to veto two bills to increase voter registration in the city of St. Louis, which is heavily African American, Senator Ashcroft testified:

> I am concerned that all Americans have the opportunity to vote. I am committed to the integrity of the ballot. . . . I vetoed a number of bills as governor, and frankly, I don't say that I can remember all the details of all of them. Accordingly, I reviewed my veto message and recalled that I was urged to veto these bills by responsible local election officials. I also appeared to anticipate the Supreme Court's recent decision, as I expressed a concern that voting procedures be unified statewide.

A review of the facts surrounding Governor Ashcroft's decision to veto the voter registration bills raises serious questions about whether he truly is ''concerned that all Americans have the opportunity to vote.'' Even the equal protection principle recently stated by the U.S. Supreme Court in the Florida election case cannot be reconciled with Ashcroft's actions.

As Governor of Missouri, Senator Ashcroft appointed the local election boards in both St. Louis County and St. Louis City. The county, which surrounds much of the city, is relatively affluent. It is 84 percent white, and votes heavily Republican. The city itself is less affluent, 47 percent black, and votes heavily Democratic.

Like other election boards across the State, the St. Louis County Election Board had a policy of training volunteers from nonpartisan groups—such as the League of Women Voters—to assist in voter registration. During Senator Ashcroft's service as Governor, the county trained as many as 1,500 such volunteers. But the number of trained volunteers in the city was zero—because the city election board appointed by Governor Ashcroft refused to follow the policy on volunteers used by his appointed board in the county and the rest of the State.

Concerned about this obvious disparity, the State legislature passed bills in 1988 and 1989 to require the city election board to implement the same training policy for volunteers used by the county election board and the rest of the State. Despite broad support for these bills, on both occasions, Governor Ashcroft vetoed them, leaving in place a system that clearly made it more difficult for St. Louis City residents to register to vote.

Among the justifications offered by Ashcroft for the vetoes was a concern for fraud, even though the Republican director of elections in St. Louis County was quoted in press reports as saying: ''It's worked well here . . . I don't know why it wouldn't also work well [in the City].''

The issues of fraud and voter registration had also been addressed by the United States Senate several years earlier, which concluded that ''fraud more often occurred by voting officials on election day, rather than in the registration process.''

In fact, in Missouri in 1989—five months after Governor Ashcroft's second veto—a clerk on the city of St. Louis Election Board was indicted for voter fraud by Secretary of State Roy Blunt.

Ultimately, the repeated refusal by the St. Louis City Election Board to train volunteer registrars had a serious

negative impact on voter registration rates in the city. During Senator Ashcroft's eight years as Governor, the voter registration rate in St. Louis City fell from a high of nearly 75 percent to 59 percent—a rate lower than the national average, lower than the statewide average, and 15 percent lower than St. Louis County rate.

The types of barriers to voter registration approved by Governor Ashcroft and his appointed election board in the city were explicitly criticized in the early 1980s by both Democrats and Republicans in the United States Congress. In October 1984, the Subcommittee on Civil Rights and Constitutional Rights of the House Judiciary Committee issued a report with the following finding:

> There is no room in our free society for inconvenient and artificial registration barriers designed to impede participation in the electoral process. . . . [W]e do not quarrel with increasing registration outreach and expanding the system of deputization [i.e., training volunteers registrars].

So we had the two vetoes, one where we had a limited bill that was just targeted for the city of St. Louis where they were going to, in effect, have training registrars like they had in the county. Ashcroft vetoed that bill and said it was special legislation and, therefore, he couldn't agree to it because it was just special to a city in Missouri. So he vetoed it.

A year later, the Missouri legislature passed an overall plan for the whole state that encouraged the appointment of training registrars, so it would have application to the city of St. Louis. And he vetoed that again. He vetoed it because he said it was too broad and unnecessary.

So the result of both of his vetoes was this dramatic adverse impact on black voter participation in the city of St. Louis. At the same time that there were 1,500 voting registrars just outside of the core city, there were zero voting registrars in the city of St. Louis as a result of Senator Ashcroft's actions in the inner city. As a result, there was a significant expansion of voter registration in Republican areas, in the white community, and there was the beginning of the collapse of voter registration in the black communities. That is a direct result.

I will, in just a few moments, show this on a chart which vividly reflects this in a compelling way.

The core question at issue in the recent Florida election case was whether the different county-by-county standards in Florida for determining what constituted a valid vote were inconsistent with the equal protection clause. Seven members of the U.S. Supreme Court, relying upon existing precedent, concluded that the equal protection clause required the application of a uniform statewide standard for determining what was a valid vote.

I think it should have been that way by common sense, but here we have the overwhelming statement of the law by the Supreme Court. It is something I think all Americans can understand, but it was not good enough for Senator Ashcroft. As a result of that failure, we saw a dramatic reduction in voter participation and registration in that community. At a time when the issues of the adequacy of the counting and the sacred right to vote are part of our whole national dialog and debate about how we are going to remedy the extraordinary injustices that occurred in the last election and in other elections as well, it would seem to me that all citizens want to have confidence in whomever is going to be Attorney General; that they are going to protect their right to vote.

If you were one of those Americans who was disenfranchised in the last national election and knew this particular record of Mr. Ashcroft—would you be wondering whether you could ever get a fair deal?

We ought to have an Attorney General in whom all Americans can have confidence that their votes will be counted and counted fairly.

In 1988, when Governor Ashcroft vetoed the first voter registration bill, he cited two reasons. He said it was unfair to pass a law requiring the city of St. Louis—but no other jurisdiction—to train volunteers to help register voters. And he said he was urged to veto the bill by his appointed St. Louis Board of Elections. (Governor's Veto Message, June 6, 1988.) Yet every other jurisdiction in Missouri—other than St. Louis City—actively trained outside volunteers.

In 1989, the Missouri legislature, in an effort to respond to Governor Ashcroft's concerns about unfairness, passed a second bill. This time the legislature adopted a uniform registrar training requirement for election boards throughout the State of Missouri. But Governor Ashcroft vetoed the legislation again claiming that ''[e]lection authorities are free to participate with private organizations now to conduct voter registration.''

Democrats and Republicans alike in the legislature said if the Governor is going to veto it because it is targeted, we will pass one with general application. That is what they did, claiming that election authorities are free to participate with private organizations.

As I mentioned, what is troubling is there was a second veto by then Governor Ashcroft. The veto effectively ensured that there would not be a ''unified statewide'' procedure—a result that directly conflicts with the equal protection principles announced in the Florida election case and cited by Senator Ashcroft in his testimony to our committee.

The facts are clear. For 8 years as Governor, Senator Ashcroft had the opportunity to ensure that citizens of St. Louis city—nearly half of whom are African-American—were afforded the same opportunity to register to vote as citizens in the rest of Missouri. Instead of working to expand the right to vote, Governor Ashcroft and his appointed election board in the city of St. Louis chose to maintain inconvenient and artificial registration barriers that had the purpose and effect of depressing participation in the electoral process, particularly by African-Americans.

Senator Ashcroft's record on desegregation and voter registration are relevant to his recent visit to Bob Jones University and his interview with Southern Partisan magazine. The policies of both Bob Jones University and Southern Partisan magazine represent intolerance, bigotry, and a willingness to twist facts to create a society in that image. And those are policies that all Americans should reject.

Displaying an extraordinary lack of sensitivity, Senator Ashcroft claims that he went to Bob Jones University and was interviewed by Southern Partisan magazine without knowing the policies and beliefs of either. Even if those claims are true, Senator Ashcroft's comments during the hearing were—at best—disturbing. Senator Ashcroft condemned slavery and discrimination, but his response displayed a fundamental misunderstanding of how certain institutions in our society perpetuate discrimination.

Senator Ashcroft was unwilling to say that he would not return to Bob Jones University. He believes his presence there may have the potential to unite Americans. But to millions of Americans, such a visit by Senator Ashcroft as Attorney General of the United States would be a painful and divisive gesture.

Similarly, on Southern Partisan magazine, Senator Ashcroft would only say that he would ''condemn those things which are condemnable.'' Surely the man who wants to sit at the head of the Department of Justice should say more and do more where bigotry is the issue. On the issue of women's rights, Senator Ashcroft's record is equally troubling. The Supreme Court's decision in Roe v. Wade a quarter century ago held that women have a fundamental constitutional right to decide whether to have an abortion. The Court went on to say that States may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to protect a women's health. After fetal viability, a State may prohibit abortions in cases where the procedure is not necessary to protect a woman's life or health.

In the years since Roe v. Wade, opponents have relentlessly sought to overturn the decision and restrict a woman's constitutional right to choose. Senator Ashcroft has been one of the chief architects of that strategy. As attorney general of Missouri, he told the Senate Judiciary Committee in 1981:

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

Senator Ashcroft's position is clear. He believes that, except when medically necessary to save a woman's life,

abortion should never be available, even in cases involving a victim of rape or incest. He has said, ''Throughout my life, my personal conviction and public record is that the unborn child has a fundamental individual right to life which cannot be infringed and should be protected fully by the 14th Amendment.'' While I respect Senator Ashcroft's personal convictions, they cannot and should not be used as an excuse to deprive women of their constitutional right to choose.

Nevertheless, Senator Ashcroft has been unrelenting in his efforts to overturn Roe v. Wade. While serving as attorney general and as Governor, Senator Ashcroft constantly sought the passage of State antichoice legislation and was a principal architect of a continuing nationwide litigation strategy to persuade the Supreme Court to restrict or overturn Roe v. Wade. In 1991, as Governor, he even boasted that no State had more abortion-related cases that reached the Supreme Court.

As attorney general, Senator Ashcroft was so intent on restricting a woman's right to choose that he personally argued Planned Parenthood of Western Missouri v. Ashcroft in the United States Supreme Court. In that case, decided in 1983, the Supreme Court specifically and clearly rejected, by a 6 to 3 margin, the attempt by the State of Missouri to require all second trimester abortions to be performed in a hospital. The Court did permit, however, three requirements—that a second physician be present during a post-viability abortion; that a minor obtain either parental consent or a judicial waiver to have an abortion; and that a pathology report be prepared for each abortion.

In 1986, Governor Ashcroft signed into law a bill that attempted to overturn Roe v. Wade by declaring that life begins at conception. The bill also imposed numerous restrictions on a woman's constitutional right to choose. After signing the bill into law, Governor Ashcroft said, ''the bill makes an important statement of moral principle and provides a framework to deter abortion wherever possible.''

In 1989, the bill was challenged all the way to the U.S. Supreme Court in Webster v. Reproductive Health Services. The State of Missouri not only asked the Supreme Court to uphold the statute, but it also specifically asked the Supreme Court to overturn Roe v. Wade. The Court refused to overturn Roe. But by a vote of 5–4, the Court upheld some provisions of the statute, including the prohibitions on the use of public facilities or personnel to perform abortions.

In addition to his attempts to restrict a woman's right to choose, Senator Ashcroft as attorney general also took direct and improper action that prevented poor women from obtaining gynecological and birth control services. As Attorney General, he issued an opinion stating that nurses in Missouri did ''not have the authority to engage in primary health care that includes diagnosis and treatment of human illness, injury or infirmity and administration of medications under general rather than direct physician guidance and supervision.'' Following this opinion, the Missouri State Board of Registration for the Healing Arts threatened the criminal prosecution of two nurses and five doctors employed by the East Missouri Action Agency who provided family planning services to low-income women.

The nurses provided family planning, obstetrics and gynecology services to the public—including information on oral contraceptives, condoms and IUDs; initiatives on breast and pelvic examinations; and testing for sexually-transmitted diseases—through funding for programs directed to low-income populations. The nurses were licensed professionals under Missouri law, and the doctors issued standing orders for the nurses. All services performed by the nurses were carried out pursuant to those orders or well-established protocols for nurses and other paramedical personnel. The board, however, threatened to find the nurses guilty of the unauthorized practice of medicine, and to find the physicians guilty of aiding and abetting them.

In 1983, more than 3 years after Attorney General Ashcroft issued his opinion, the Supreme Court of Missouri rejected the opinion, finding that nothing in the state statutes purported to limit or restrict the nurses' and doctors' practices, and that the nurses actions ''clearly'' fell within the legislative standard governing the practice of nursing. Although the decision ensured that nurses in Missouri could continue to provide family planning services, during the almost 3 years that the case was pending, Attorney General Ashcroft's legally untenable opinion placed nurses providing gynecological services, including family planning, in considerable legal peril.

Senator Ashcroft's aggressive and vocal opposition to Roe v. Wade continued during his service as a Member of the Senate. He voted in favor of overturning Roe v. Wade and sponsored both a human life amendment to the Constitution and parallel legislation. The human life amendment would prohibit all abortions except that required to prevent the death of the mother—but only if every reasonable effort is made to preserve the life of the women and the fetus. The proposed constitutional amendment contains no exception for rape or incest, and no protections for a woman's health. Because the amendment and the proposed statute define life as beginning at fertilization, its language could also be used to ban any type of contraception which prevents a fertilized egg from being implanted in the uterus, including birth control pills and IUDs.

Two weeks ago, however, Senator Ashcroft appeared to experience a confirmation conversion. He asked us to disregard his past record and unyielding position against reproductive rights and accept his new position—he now views ''Roe v. Wade and Planned Parenthood v. Casey as the settled law of the land.'' He will not longer work to dismantle Roe, but to enforce it, he says.

When asked about his efforts to overturn Roe v. Wade, Senator Ashcroft told the Committee that he ''did things to define the law by virtue of lawsuits . . . did things to refine the law when I had an enactment role.'' But as an example of his view of ''defining'' and ''refining'' the law, during his 1981 testimony before the Senate Judiciary Committee as attorney general of Missouri, Senator Ashcroft testified that the human life bill—which would prohibit all abortions—could be constitutional within the framework of Roe v. Wade. It is clear that as Attorney General of the United States, Senator Ashcroft could easily feel free to define and refine Roe v. Wade out of existence.

Senator Ashcroft also wants the committee to believe that he won't ask the Supreme Court to overturn Roe v. Wade. The current Court has made it clear that it will not overturn Roe. In that sense, Roe is settled law. But once the current composition of the Court changes, however, President Bush and Senator Ashcroft will feel free to take steps to overturn Roe. In an interview on January 20, 2001, President Bush said;

> Roe v. Wade is not going to be overturned by a Constitutional amendment because there's not the votes in the House or the Senator. I—secondly—I am going to put judges on the Court who strictly interpret the Constitution, and that will be the litmus test . . . I've always said that Roe v. Wade was—was a judicial reach.

If Senator Ashcroft becomes Attorney General, he will be well-positioned to undermine and eliminate this most basic right of privacy for all American women. President Bush and Senator Ashcroft will select judges and justices who are prepared to turn back the clock to a time when women did not have the right to choose.

We know Senator Ashcroft is willing to go to the courts time and time again to challenge settled law. State of Missouri v. The National Organization for Women is a case in point. In that case, the organization had called for a boycott of Missouri because of the failure by the State to ratify the equal rights amendment to the U.S. Constitution.

Senator Ashcroft told the Judiciary Committee that the litigation brought in Missouri by his office against the National Organization for Women was well within the law. He said:

> We filed the lawsuit, to the best of my recollection, because the boycott was hurting the people of Missouri, and we believed it to be in violation of the antitrust laws. The lawsuit had nothing to do with the ERA . . . or the political differences that I might have had with NOW.

He went on to say:

> Now, I litigated that matter thoroughly, and frankly, other states attempted it . . . I

think the law is clear now and has been clear in the aftermath of that decision.

That testimony was grossly misleading. At the time he brought the NOW case, he law was already well-settled in direct opposition to Senator Ashcroft's position. In ruling against Attorney General Ashcroft, both the federal district court and the Eighth Circuit Court of Appeals relied upon the Supreme Court's decision in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.—a case decided 17 years before Senator Ashcroft brought suit against NOW. The Attorney General said in that case:

[The Sherman Act] . . . is a code that condemns trade restraints, not political activity, and, a publicity campaign to influence governmental action falls clearly into the category of political activity.

Still, Attorney General Ashcroft was not deterred, even though the district court and the court of appeals had ruled against him, relying upon the clear U.S. Supreme Court precedent. Senator Ashcroft persisted and asked the Supreme Court to review the NOW case. The Court refused even to hear the case.

It is deeply troubling that as attorney general, Senator Ashcroft used state resources to litigate a weak case that rested on an argument rejected by the Supreme Court years ago. But, as with the litigation surrounding the voluntary school desegregation plan, he preferred to fight on in appeal after appeal in a losing and illegitimate battle, rather than surrender to justice and protect the rights of women.

Mr. President, just for the information of Members, I have probably 4 or 5 more minutes. I know other wish to speak. Than I will put the rest of the statement in the RECORD.

Mr. President, Senator Ashcroft's opposition to gun control, his interpretation of the second amendment, and his advocacy of extremist gun lobby proposals are also very disturbing. Over 30,000 Americans lose their lives to gun violence every year, including over 3,000 children and teenagers. Our Nation's level of gun violence is unparalleled in the rest of the world. In response to the devastation caused by gun violence, the majority of Americans support stricter gun control laws and vigorous enforcement of the laws now on the books.

Contrary to the majority of the American public, Senator Ashcroft vigorously opposes stricter gun control laws. He addressed this issue during the hearing, where he seemed to change his long held beliefs and emphasized his commitment to enforce the gun laws and defend their constitutionality. He testified that ''there are constitutional inhibitions on the rights of citizens to bear certain kinds of arms.'' Saying he supported some controls, Senator Ashcroft referred to his attempt to amend the juvenile justice bill to make semiautomatic assault weapons illegal for children. However, he neglected to mention that his proposed amendment was actually a weaker version of one proposed by Senator FEINSTEIN.

He sought to create a parental consent exception to Senator FEINSTEIN's bill, which would have prevented juveniles from obtaining semiautomatic assault weapons. At the hearing, Senator Ashcroft also testified that the assault weapons ban, the Brady law, licensing and registration of guns, and mandatory child safety locks are all constitutional.

Although Senator Ashcroft's testimony was intended to ease our concerns about his willingness to enforce gun control laws, it is difficult to reconcile what he said last week with his rhetoric and his record. Contrary to his testimony, Senator Ashcroft has previously stated that individuals have a virtually unconditional right to bear arms under the second amendment. In a 1998 hearing, he commented on court decisions, which noted that the second amendment does not guarantee individuals unrestricted rights to keep and bear arms. Senator Ashcroft expressed his disagreement with the view accepted by every federal appellate court and the Supreme Court, that the second amendment was intended to protect state-regulated militias, but does not entitle individuals to possess or use weapons connected with participation in private militias. He criticized these court decisions, stating, ''The argument makes no sense to me.'' At the 1998 hearing, Senator Ashcroft went on to say:

Indeed, the second amendment—like the First—protects an important individual liberty that in turn promoted good government. A citizenry armed with the right to possess firearms and to speak freely is less likely to fall victim to a tyrannical central government than a citizenry that is disarmed from criticizing government or defending themselves.

Senator Ashcroft's extreme view of the second amendment parallels his rhetoric comparing today's elected officials with the despots of the 18th century. The pro-gun Citizens Committee for the Right to Keep and Bear Arms reported that Senator Ashcroft compared ''today's power brokers and policy wonks'' in the Federal Government to the ''European despots from whom our Founding Fathers fled.'' He has explained that individuals should be allowed to ''keep and bear arms'' because ''I am fearful of a government that doesn't trust the people who elected them.'' Are we talking about our system of government? Are we talking about that?

Unfortunately, Senator Ashcroft's rhetoric and record lend undeserved credibility and legitimacy to the views espoused by anti-government militia groups in our Nation. Members of these groups believe the second amendment gives them the right to form private armies as a check against federal power. These militia groups point out that guns are not for hunting or even protecting against crime. Rather, they say, the second amendment was intended to safeguard liberty forever by ensuring that the American people should never be out-gunned by their own government. Ruby Ridge and Waco are two recent violent episodes in which groups holding these views came into armed conflict with federal law enforcement. The Department of Justice has the all-important responsibility to enforce the laws against such extremist groups. Yet Senator Ashcroft's past rhetoric has supported these extremist views and causes legitimate concern that his views are so outside the mainstream of American thought that as Attorney General he will be unable and unwilling to enforce the gun laws and pursue prosecutions against militia groups for violations of Federal laws.

Although Senator Ashcroft testified that he believes in the constitutionality of the assault weapons ban, the Brady law, gun licensing and registration, and mandatory child safety locks on guns, he voted to oppose legislation in these areas. He voted against the ban on the importation of high ammunition magazines. He voted against closing the gun show loophole. He voted for a measure to impede implementation of the National Instant Check System. He voted twice to weaken existing law by removing the background check requirements on pawnshop redemptions and by allowing dealers to sell guns at gun shows in any state. He voted twice against bills to require child safety locks, and he voted against regulating firearms sales on the Internet.

Senator Ashcroft testified that he supported funds for gun prosecution initiatives. However, he has voted to reduce funding in other areas vital to gun law enforcement. For example, he voted against funding to implement background checks under the Brady law, named after former Reagan Press Secretary James Brady. Indeed, Senator Ashcroft has referred to James Brady, a brave and patriotic American, as ''the leading enemy of responsible gun owners.'' When provided the opportunity to express regret for making such an unjustified statement, Senator Ashcroft declined.

Senator Ashcroft is also closely tied to the gun lobby and he has often accepted contributions from these organizations and supported their agendas. During the hearing, he told us that keeping guns out of the hands of felons is a ''top priority'' of his. Yet, in 1998, this did not seem to be a top priority for him. He supported an NRA-sponsored ballot initiative that would have allowed almost anyone to carry concealed guns in Missouri. The proposal was so filled with loopholes that it would have allowed convicted child molesters and stalkers to carry semiautomatic pistols into bars, sports stadiums, casinos, and day care centers. The proposal was opposed by numerous law enforcement groups and many in the business community. Proponents of

the measure say Senator Ashcroft volunteered his help to support the referendum, even recording a radio ad endorsing the proposal. Senator Ashcroft stated in response to written questions that ''Although [he did] not recall the specific details, [his] recollection is that supporters of the referendum approached [him] and asked [him] to record the radio spot.'' The fact remains that Senator Ashcroft did support the referendum and did record the radio spot. Few can doubt that as a seasoned politician, Senator Ashcroft made himself fully aware of the contents of the referendum before lending his name to it. And if he did not, there is even greater reason to question his judgment and suitability for such a high and important position in our federal government.

Senator Ashcroft championed the NRA's concealed weapon proposition in 1998. But in 1992, while governor of Missouri, he had voiced his concerns about such a measure. As Governor, he stated he had ''grave concerns'' about concealed carry laws. He stated, ''Overall, I don't know that I would be one to want to promote a whole lot of people carrying concealed weapons in this society.'' He further stated, ''Obviously, if it's something to authorize everyone to carry concealed weapons, I'd be concerned about it.'' When asked about his change of view in deciding to support the 1998 initiative, Senator Ashcroft said he changed his position because of ''Research plus real-world experiences.'' However, Senator Ashcroft's research was so flawed that he responded to written questions that ''[t]o the extent there were loopholes in Missouri law'' that would permit convicted child molesters and stalkers to carry concealed weapons, he was ''unaware of those provisions at the time.'' Later, it was reported that the gun lobby spent $400,000 in support of Senator Ashcroft's Senate reelection campaign. He became ''the unabashed celebrity spokesman . . . for the National Rifle Association's recent attempts to arm citizens with concealed weapons in Missouri,'' according to a column by Laura Scott in the Kansas City Star.

The Citizens' Committee for the Right to Keep and Bear Arms gave Senator Ashcroft the ''Gun Rights Defender of the Month'' Award for leading the opposition to David Satcher's nomination to be Surgeon General. The group objected to Dr. Satcher because he advocated treating gun violence as a public health problem.

Based on his close ties to the gun lobby and his strong support for their agenda, it is difficult to have confidence that Senator Ashcroft will fully and fairly enforce the nation's gun control laws and not seek to weaken them.

Senator Ashcroft has shown time and time again that he supports the gun lobby and opposes needed gun safety measures. Given the important litigation in the federal courts, it is imperative to have an Attorney General who will strongly enforce current gun control laws such as the Brady Law, the assault weapons ban, and other statutes. It is also important to have an Attorney General with a responsible view of proposed legislation when the Department of Justice is asked to comment on it.

Senator Ashcroft's handling of judicial and executive branch nominations also raises deep concerns. In four of the most divisive nomination battles in the Senate in the 6 years he served with us, Senator Ashcroft was consistently involved in harsh and vigorous opposition to the confirmation of distinguished and well-qualified African Americans, an Asian American and a gay American.

When President Clinton nominated Judge Ronnie White of the Missouri Supreme Court to be a federal district court judge, Senator Ashcroft flagrantly distorted the record of the nominee and attacked him in the strongest terms. He accused Judge White of being ''an activist with a slant toward criminals.'' He accused him of being a judge with ''a serious bias against a willingness to impose the death penalty.'' He accused him of seeking ''at every turn'' to provide opportunities for the guilty to ''escape punishment.'' He accused him of voting ''to reverse the death sentence in more cases than any other [Missouri] Supreme Court judge.''

When questioned about Judge White's nomination, Senator Ashcroft did not retreat from his characterization of Judge White's record, although a review clearly demonstrates that Senator Ashcroft's charges were baseless.

Judge White is not an ardent opponent of the death penalty. He voted to uphold death penalty convictions in 41 cases, and voted to reverse them in only 17 cases. His votes in death penalty cases were not significantly different from the votes of the other members of the Missouri Supreme Court—judges whom Senator Ashcroft appointed when he was Governor. In more than half of the 17 cases in which Judge White voted to overturn a death sentence, he was voting with the majority—with Ashcroft appointees. Seven of these cases were unanimous decisions. There were only three death penalty reversals in which Judge White was the only judge who voted to overturn the conviction. In fact, four of the justices whom Senator Ashcroft named to the court have voted to overturn more death penalty convictions than Judge White. That record is not the record of ''an activist with a slant toward criminals.''

In fact, Judge White's record in death penalty cases shows him to be in the Missouri mainstream. Four of his colleagues who were appointed to the bench by Governor Ashcroft have voted to overturn between 22 percent and 25 percent of the death penalty convictions they considered. Judge White voted to reverse the convictions in 29 percent of the death penalty cases he heard. By contrast, his predecessor Judge Thomas, also an Ashcroft appointee, voted to reverse 47 percent of the death sentences he reviewed. There is no significant difference between Judge White's record on the death penalty and the records of his colleagues on the court.

Some law enforcement officials in Missouri did oppose the White nomination. But many Missouri police officials supported Judge White. He had the support of the State Fraternal Order of Police. The head of the FOP said, ''The record of Justice White is one of a jurist whose record on the death penalty has been far more supportive of the rights of victims than the rights of criminals.'' Judge White was also endorsed by the chief of police of the St. Louis Metropolitan Police Department. The president of the Missouri Police Chiefs Association described Judge White as ''an upright, fine individual.''

In Senator Ashcroft's statements on the Senate floor on the nomination, he focused on a small number of Judge White's opinions. A review of Judge White's entire record suggests that those cases were taken very much out of context. In two of them, there were serious questions about the competency of the defendant's trial counsel. In the third, there was evidence of racial bias by the trial judge. Those cases were not disagreements about the death penalty. The issue was whether the defendant had received a fair trial. Judge White's dissent in one of those cases makes this point in the clearest terms:

> This is a very hard case. If Mr. Johnson was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given . . . I am not convinced that the performance of his counsel did not rob Mr. Johnson of any opportunity he might have had to convince the jury that he was not responsible for his actions. This is an excellent example of why hard cases make bad law. While I share the majority's horror at this carnage, I cannot uphold this as an acceptable standard of representation for a defendant accused of capital murder.

Senator Ashcroft's statements on the White nomination strongly suggest that Senator Ashcroft has a misguided view of the role of judges in our constitutional system. To label a judge ''pro-criminal'' based on isolated opinions over the course of an entire career is wrong. Judges are obliged to decide individual cases according to the requirements of law, including the Constitution. Judge White has frequently voted to affirm criminal convictions, including 41 capital cases. The fact that he reached a contrary position in a few cases should not disqualify him to be a federal judge.

What is most noteworthy about Senator Ashcroft's attacks on Judge White is the extraordinary degree to which Senator Ashcroft distorted the record in order to portray Judge White's confirmation as a referendum on the death penalty. This is a judge who had voted

to uphold more than 70 percent of the death penalty convictions he had reviewed. Yet Senator Ashcroft never questioned Judge White about these issues at the committee hearing on Judge White's nomination, and he never gave Judge White an opportunity to explain his reasons for dissenting in the three cases before unfairly attacking his record.

It appears that Senator Ashcroft had decided to use the death penalty as an issue in his campaign for re-election to the Senate, and to make his point, he cruelly distorted the honorable record of a distinguished African American judge and denied him the position he deserved as a federal district court judge. As I said at the hearing, what Senator Ashcroft did to Judge White is the ugliest thing that has happened to a nominee in all my years in the Senate.

Senator Ashcroft was also asked about the nominations of Bill Lann Lee to serve as Assistant Attorney General for Civil Rights, Dr. David Satcher to serve as Surgeon General of the United States, and James Hormel to serve as U.S. Ambassador to Luxembourg.

Senator Ashcroft told the committee that he could not support Mr. Lee because he had ''serious concerns about his willingness to enforce the Adarand decision'' on affirmative action. In truth, however, Mr. Lee's position on affirmative action was well within the mainstream of the law, and he repeatedly told the committee that he would follow the Supreme Court's ruling in the Adarand case. As Senator LEAHY said during the Ashcroft confirmation hearings.

> Mr. Lee testified on a number of occasions—in fact, testified under oath, including, incidentally, directly in answer to your questions, that he would enforce the law as declared in Adarand. And he also said, in direct answer to questions of this committee, he considered the Adarand decision of the Supreme Court as the controlling legal authority of the land, that he would seek to enforce it, he would give it full effect . . .

Similarly, Senator Ashcroft said he did not support Dr. Satcher to be Surgeon General because he:

> Supported a number of activities that I thought were inconsistent with the ethical obligations of a medical doctor and a physician, particularly the surgeon general . . . for example he supported an AIDS study on pregnant women in Africa where some patients were given placebos, even though a treatment existed to limit transmission of AIDS from the mother to the child . . . I, secondly, believed his willingness to send AIDS-infected babies home with their mothers without telling their mothers about the infection of the children was another ethical problem that was very serious.

In fact, at the time of the debate on the Satcher nomination in 1997, approximately 1,000 babies were born with HIV every day. Most of the births were in developing countries, where the U.S.-accepted regimen of AZT treatment is not practical because of safety and cost concerns. In 1994, the World Health Organization had called a meeting of international experts to review the use of AZT to prevent the spread of HIV in pregnancy. That meeting resulted in the recommendation that studies be conducted in developing countries to test the effectiveness and safety of short-term AZT therapy that could be used in developing countries and that those studies be placebo-controlled to ensure safety in areas with various immune challenges. Approval was obtained by ethics committees in this country and the host countries and by the UNAIDS program. The National Institutes of Health and the Centers for Disease Control agreed to support the studies in order to save lives in developing countries.

Many leaders in the medical field supported the studies. Dr. Nancy Dickey, AMA president-elect at the time, said that the studies in Africa and Asia were ''scientifically well-founded'' and carried out with ''informed consent.'' Those who did not support the studies still supported Dr. Satcher's nomination. Dr. Sidney Wolfe, Director of Public Citizen's Health Research Group, said that while he had for many months expressed opposition to the AZT experiments, it represented an honest difference of opinion with Satcher. He said he fully supports the nomination. ''I think he'd make an excellent surgeon general,'' Wolfe said. ''I have known him and I admire him.''

Senator Ashcroft also mis-characterized Dr. Satcher's role in the survey of HIV child-bearing women. In 1995, seven years after the survey began during the Reagan administration, Dr. Satcher, as acting CDC director, and Dr. Phil Lee, former Assistant Secretary for Health, halted the HIV survey. They did so because of a combination of better treatment options for children with HIV, the discovery of a therapeutic regimen to reduce mother-to-infant HIV transmission, and a greater ability to monitor HIV trends in women of childbearing age in other ways.

The HIV tests had begun in 1988, five years before Dr. Satcher joined the CDC. The tests were supported by public health leaders at every level of government as a way to monitor the HIV/AIDS epidemic. These surveys were designed to provide information about the level of HIV in a given community without individual information. The Survey of Child-Bearing Women was one of the HIV surveys conducted under the program. It was funded by the CDC and conducted by the states. Forty-five states, including Missouri while Senator Ashcroft was Governor, participated in the survey and requested and received federal funds from the CDC to conduct it. The survey was important to public health officials at the time, because it was the only unbiased way to provide a valid estimate of the number of women with HIV and their demographic distribution. Dr. Satcher's participation in the survey was justified, and it was not a valid reason for Senator Ashcroft to deny him confirmation as Surgeon General.

The case of James Hormel is also especially troubling. When Mr. Hormel was nominated by President Clinton to serve as Ambassador to Luxembourg, Senator Ashcroft and Senator HELMS were the only two members of the Foreign Relations Committee to oppose the nomination. Although Senator Ashcroft voted against Mr. Hormel, Senator Ashcroft did not attend the confirmation hearings, did not submit written questions, and refused Mr. Hormel's repeated requests to meet or speak by phone to discuss the nomination.

In 1998, when asked about his opposition to Mr. Hormel's nomination, Senator Ashcroft stated that homosexuality is a sin and that a person's sexual conduct ''is within what could be considered and what is eligible for consideration.'' Senator Ashcroft also publicly stated in 1988 that: ''[Mr. Hormel's] conduct and the way in which he would represent the United States is probably not up to the standard that I would expect.''

Senator LEAHY asked Senator Ashcroft at the Judiciary Committee hearings whether he opposed Hormel's nomination because of Hormel's sexual orientation. Senator Ashcroft responded ''I did not.'' Instead, Senator Ashcroft claimed that he had ''known Mr. Hormel for a long time''—Mr. Hormel had been a dean of students at the University of Chicago law school when Senator Ashcroft was a student there in the 1960s. Senator Ashcroft repeatedly testified that he based his opposition to Mr. Hormel on the ''totality of the record.''

Mr. Hormel was so troubled by Senator Ashcroft's testimony that he wrote to the committee and said the following:

> I want to state unequivocally and for the record that there is no personal or professional relationship between me and Mr. Ashcroft which could possibly support such a statement. The letter continued, I have had no contact with him [Ashcroft] of any type since I left my position as Dean of Students . . . nearly thirty-four years ago, in 1967 . . . For Mr. Ashcroft to state that he was able to assess my qualifications . . . based upon his personal long-time relationship with me is misleading, erroneous, and disingenuous . . . I find it personally offensive that Mr. Ashcroft, under oath and in response to your direct questions, would choose to misstate the nature of our relationship, insinuate objective grounds for voting against me, and deny that his personal viewpoint about my sexual orientation played any role in his actions.

We should all be deeply concerned about Senator Ashcroft's willingness to mislead the Judiciary Committee about his reasons for opposing the Hormel nomination. As the St. Louis Post-Dispatch noted on January 22, 2001. ''[T]he most disturbing part of Mr. Ashcroft's testimony was the way in which he misstated important parts of his record.''

In conclusion, the Attorney General of the United States leads the 85,000 men and women who enforce the nation's laws in every community in the

country. The Attorney General is the nation's chief law enforcement officer and a symbol of the nation's commitment to justice. Americans from every walk of life deserve to have trust in him to be fair and just in his words and in his actions. He has vast powers to enforce the laws and set priorities for law enforcement in ways that are fair or unfair—just or unjust.

When a President nominates a person to serve in his Cabinet, the presumption is rightly in favor of the nominee. But Senator Ashcroft has a long and detailed record of relentless opposition on fundamental issues of civil rights and other basic rights of vital importance to all the people of America, and the people of this country deserve better than that. Americans are entitled to an Attorney General who will vigorously fight to uphold the law and protect our constitutional rights. Based on a detailed review of his long record in public service, Senator Ashcroft is not that man. I urge the Senate to vote no on this nomination.

Mr. President, since I see a number of my colleagues, I will take the opportunity, when there is a pause in the Senate, to complete my statement. At this time, I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I consider it an honor and privilege to stand here today in support of the nomination of John Ashcroft to be Attorney General of the United States. Contrary to some of the rhetoric we have been hearing from the other side, everybody in this institution knows he is one of the finest people who ever served here. He is a man of great religious faith, a moral man. Yet as we listen to this debate, if it wasn't for the fact that it was so personally destructive and so vindictive, it would be humorous.

We have a man who served 6 years in the Senate, served two terms as Governor, two terms as attorney general of the State of Missouri. Yet to hear the debate, he is anti-child, anti-woman, anti-black, anti-gay, anti-Catholic. What else can possibly be said?

One thing we can certainly be assured of—the left knows how to play politics. They do it well, and I commend them for it. Unfortunately, though, sometimes in politics, one destroys unfairly the reputations of people who don't deserve it. That is what offends me the most. I will not use the term ''anger,'' but it does offend me that this kind of personal destruction has to be used.

I recall the comments earlier in the debate today of Senator LEAHY when he said there are 280 million Americans with divergent ethnic backgrounds and political views. Out of that 280 million Americans, according to the left, if there are any of those 280 million Americans who are conservative and happen to be pro-life or pro-gun, they can't be Attorney General. If they are pro-choice or if they are anti-gun, then they can be.

I again remind my colleagues that the vote on Janet Reno was 98–0. Most of us on this side of the aisle would agree that her views and ours were quite different, but we supported her nomination because the President of the United States has a right to pick his or her Cabinet. That is a fact.

I will respond directly to this anti-Catholic charge. It is so outrageous, I don't know how people can look in the mirror, to be candid about it, and do this kind of personal destruction.

Let me read from a copy of a letter I just received from Senator KENNEDY's own cardinal, Cardinal Law. I will read it into the RECORD:

> DEAR SENATOR ASHCROFT: Let me begin by expressing my deep dismay at the unfounded and scurrilous charge that you could possibly harbor anti-Catholic feelings. I was astounded to hear that anyone was making such a ridiculous accusation.
>
> From any time as Bishop of Springfield/Cape Girardeau until today, I have always found you to be a man of honor, integrity and deep faith. I recall with great fondness the many opportunities we had to work together on many issues affecting the lives of the good people of the State of Missouri. In a particular way, I recall how kind and thoughtful you were to invite me to address The Governor's Annual Prayer Breakfast on January 9, 1992 when you were serving as the Governor of Missouri. On that same day you also honored me with an invitation to address The Governor's Leadership Forum on Faith and Values. College students, then and now, are beneficiaries of your generous love and concern for them and their futures. I do not recall that you made any distinctions between black and white, Protestant, Catholic or Jew in your desire to instill in them a love for their faith, their families and one another as brothers and sisters in the human family.
>
> Let me assure you, John, of my prayers.
>
> Asking God to bless you, Janet, the children and all whom you hold dear and with warm personal regards. I am
>
> Sincerely yours in Christ,
>
> BERNARD F. LAW,
> *Archbishop of Boston.*

Mr. President, there are a long line of people on the basis of their position on life who couldn't be Attorney General. We could start with Jesus Christ himself. We could also add to that list the Pope, Mother Teresa, all the cardinals in the United States. We are going to have to eliminate a whole lot of people. It is so outrageous and, frankly, pathetic, it really exposes the left for what they are.

It exposes the left for what they are.

Let me read part of a comment made by Bill Bennett:

> What you are seeing is the true face of the Democratic Party. What you are seeing is them saying to a man ''you are perfectly decent, everything you have done is within the law, you haven't harbored any illegal aliens, you have never left the scene of a crime, you led an exemplary life, but we don't approve of your views. You dare to say you are pro-life, you dare to say you are opposed to reverse discrimination and for that you will pay. For that we will make this experience something you will never forget.'' I hope they do it. I hope the American people watch it. If you want to see the haters, you'll see them in these press conferences behind the attempt to kill the Ashcroft nomination.

You can't say it any better than that. People should be ashamed of themselves. Who did our side oppose on a Cabinet appointment in the Clinton administration? They all were approved by voice vote, with the exception of Janet Reno. That was 98–0.

> The activist Democrats shooting at John Ashcroft in his bid to become America's next Attorney General have revealed the ugliness about themselves, not the nominee.

So said Betsy Hart of Scripps Howard. That is the truth. There is the ugliness. It is not John Ashcroft. John Ashcroft sat on that committee on a panel and took those questions and took that abuse. He was decent, respectful, honorable, gracious, and took it all.

He is above them all. He showed it on national television. He is above them all. His critics couldn't tie his shoe laces or even shine his boots.

Betsy Hart also said:

> Apparently these folks are so comfortable with using cabinet offices to create law instead of to enforce existing laws and so content to see judges write new law instead of interpret existing law, they can't fathom a responsible officeholder who will honor the rule of law.

You cannot say it any better than that, if you are prepared for 10 years. That sums it up in a nutshell. They are so used to using these positions to create law, they can't believe a person such as John Ashcroft, who will say to you: I worked as hard as I could as a Member of the Senate to create laws for what I believe in. So does everybody else on the left, and you have every right to do that. But there is a difference between that John Ashcroft and the John Ashcroft, however reluctant he may be, who will step up to the plate as the Attorney General of the United States and enforce the law—yes, even the laws he doesn't like. His record proves he did it over and over and over and over and over again. There is not one shred of evidence to indicate that he didn't do it.

I am sick and tired of the hypocrisy in this place. Much was made about another issue; when you start getting into the racial charges, that hits right below the belt. I am going to answer it. It deserves to be answered. Is there anybody in here whose spouse taught for several years at a predominantly black school? Is that racist? In the news today is speculation that his No. 2 person may, in fact, be black. So what. The most qualified person should be who he picks. Then the issue of desegregation in the St. Louis matter before the Governor and the attorney general. During that suit, the job of the attorney general and the Governor was to support the State's position, to defend the State. It wasn't about segregation. It was about taxes. It was about busing. It was a very controversial issue. Those who opposed busing or imposing taxes by the courts on the citizens were not racists.

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

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

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

SENATOR TED KENNEDY & SENATOR TOM HARKIN

INTITE YOU FOR BREAKFAST TO MEET AND SUPPORT

MISSOURI SENATE CANDIDATE

ATTORNEY GENERAL JAY NIXON

TUESDAY, MARCH 31, 1998

THE MONOCLE

8:30 AM–9:30 AM

RSVP to Jill Gimmel—202–546–9494

or Don Erback—202–546–9292

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

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

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

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

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

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

Do I agree with everything Janet Reno did? No. Bill Clinton won the Presidency and had the right to pick his Attorney General. That is the situation right now. George Bush is the President, and he has the right to pick. If you think John Ashcroft is not going to enforce the law, then say so. If you think he is a racist, say so. But there is not one shred of evidence that indicates otherwise.

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

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

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

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

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

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

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

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

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

Sincrely,

JERRY ''PEANUTS'' GAINS,
President.

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

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

That is all it was. That is what that was about. It wasn't about racism; it was about a judge who some of us thought—55 of us, as a matter of fact—thought shouldn't be on the court because of his views on crime.

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

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

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

The PRESIDING OFFICER. The Senator from Texas.

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

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

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

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

John Ashcroft kept his word. He kept his word and has never uttered a word about Mrs. CARNAHAN. So I think when he was ultimately defeated, his magnanimity in defeat also showed that he is a person of character first—character above public servant, character above partisan, character above everything else. He showed it at a time when he had nothing to gain, when he thought he probably would not be in public office again. But he did what was right from his heart. That is why I am supporting him for Attorney General of the United States.

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

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

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

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

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

He worked with me on reauthorizing the Violence Against Women Act. We introduced legislation to amend current stalking laws to make it a crime to stalk someone across State lines. Also, cyberstalking has become a more common crime in recent years, as the use of the Internet has increased. Young people are lured into a situation in which criminal conduct becomes part of an association. That happens when you have Internet chatrooms. Internet chatrooms often cause people to start thinking they want to meet, and that has facilitated criminal acts when it has not been monitored correctly. So to try to discourage it, we made that against the law.

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Illinois.

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator LEAHY asked of Senator Ashcroft:

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

John Ashcroft:

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

Senator LEAHY went on to say:

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

And that was the end of the transcript.

Ms. James goes on to say:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Ashcroft opposed the nomination of James Hormel as Ambassador to Luxembourg because Mr. Hormel, in Senator Ashcroft's words, ''. . . has been a leader in promoting a lifestyle . . . . And the kind of leadership he's exhibited there is likely to be offensive to . . . individuals in the setting to which he will be assigned.''

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

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

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

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

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

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

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

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

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

Senator Ashcroft never agreed to such a meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Some have taken—and mistaken—this visit as a sign that I approve of the anti-Catholic and racially divisive views associated with that school. As you know from a long friendship with my family—and our own meeting last year—this criticism is unfair and unfounded. Such opinions are personally offensive to me and I want to erase any doubts about my views and values.
>
> On reflection, I should have been more clear in disassociating myself from anti-Catholic sentiments and racial prejudice. It was a missed opportunity causing needless offense, which I deeply regret.

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

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

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

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

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

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

When there was an effort made in Missouri to deal with segregated schools, there was a voluntary desegregation plan that was agreed to by the students and their parents, by the administrators and the teachers, people living in the community, of how they would voluntarily desegregate schools and give children an opportunity for a good education. We have heard during the course of the committee hearing, we heard again on the floor of the Senate, John Ashcroft used every tool in his tool box to try to stop this voluntary desegregation plan. Frankly, that is a poor reflection on what John Ashcroft would do as Attorney General.

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

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

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

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

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

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

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

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

I said: My door is open.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There have been a lot of questions asked about the issue of reproductive rights of women and what the new Attorney General, John Ashcroft, would do with that authority. I know John Ashcroft's position. I respect him for the intensity of his belief in opposing Roe v. Wade for his entire public career. There are people in my State of Illinois and his State of Missouri who feel just as passionately on one side or the other side of the issue. It worries some that he would be entrusted with the authority and responsibility to protect a woman's right to choose and what he would do with it. He tried to set the issue aside in his opening statement by saying he accepts Roe v. Wade and Casey v. Planned Parenthood, two Supreme Court cases, in Ashcroft's words, as the ''settled law of the land.'' That, of course, raises questions. If it is the settled law of the land, what will he do in enforcing it?

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

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

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

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

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

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

Senator Ashcroft would not answer the question.

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Michigan.

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

The PRESIDING OFFICER. The Senator from Alabama.

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

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

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

How long will the Senator from Michigan speak?

Mr. LEVIN. Perhaps 15 minutes.

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

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

The PRESIDING OFFICER. The Senator from Nevada.

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

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

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

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

The PRESIDING OFFICER. The Senator from Michigan.

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

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

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

Mr. LEVIN. We were alternating.

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

Mr. LEVIN. We just did.

Could the Senator from Virginia give us a time indication.

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

The PRESIDING OFFICER. The Senator from Virginia.

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

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

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

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

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

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

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

That is a very important function we perform.

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

Former Senator John Ashcroft from Missouri recently lost his election bid to the Senate under most unusual circumstances, not unlike the circumstances that faced my State at one time, when we lost one of our most valued public servants, a public servant who was contending for the office of the U.S. Senate, who had beaten me fairly and squarely in basically a convention or modified primary type situation. I was in strong support of that individual. Then his light plane one night crashed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. LEAHY. I do, yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

While Senator Ashcroft's rhetoric over the years reveals his zeal and determination, it has not reflected the same concern for impartiality and fairness. I have concluded that his record and his rhetoric are so divisive and polarizing that his nomination will not provide the necessary confidence all Americans are entitled to have in the fairness and impartiality required of the Department of Justice. Here are four examples:

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

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

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

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

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

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

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

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

In 1995, Southern Partisan offered its subscribers T-shirts celebrating the assassination of Abraham Lincoln. In the same year, an author of an article in that publication alleged ''there is no indication that slavery is contrary to Christian ethics.'' In 1990, another article praised former Ku Klux Klan Grand Wizard David Duke as ''a Populist spokesperson for a recapturing of the American ideal.''

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

My experience with John Ashcroft over the last 6 years is that clearly he is such an individual. I have not always agreed with John. John and I have voted differently on certain issues—some high profile; some not so high profile. I don't think that is relevant.

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

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

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

I thank the Chair. I yield the floor.

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

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

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

It is a sad day for me because it is never easy opposing a nominee and a former colleague. I believe that one gives the President the benefit of the doubt in terms of appointments. It is the President's Cabinet. He won the election. Yes, it was close. But I said then and believe every bit as much today that the closeness of the election should do nothing to undermine the legitimacy of the Presidency. I explained that I wanted to give the President his choice. And to have to oppose somebody, no less a colleague, is not easy and requires some thought and fortitude. So it is a sad day for me as a Senator. It is a sad day for the Senate because we are so divided on this nomination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ironically, I don't think Senator Ashcroft disagrees we need a balanced Attorney General. That is why he went to great lengths during the hearing to portray himself as now being different than the Senator Ashcroft we all knew. He was not saying that someone of such vehement and strong opposition, he was not saying that somebody so far to the right should be Attorney General, but he was saying he was a different person or would be a different person as Attorney General than he was as Senator. Every Senator will have to judge for himself or herself whether he can do that, even if he should want to. I do not think he can. In my opinion, John Ashcroft's unique past will indelibly mark his future, making his nomination a source of anger and fear to so many in the country.

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

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

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

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

I would argue, no, that while you certainly give the President the benefit of the doubt in terms of an appointment, ideology has to enter into it because the Attorney General does so many things that are not simply enforcing the law but are rendering opinions in choosing judges, areas of discretion. I do not think even if one ascribed to Senator FEINGOLD's argument—and I say it with due respect; he is a man of deep principle and I respect his decision. He argued eloquently in committee yesterday, and I know he thought long and hard about it. But even if you assume someone would enforce the law fully, you could never rule out ideological disposition. If Bull Connor had been nominated for Attorney General, my guess is we would all say, even if we were certain he would enforce existing law, we would be certain he should not be Attorney General, based on his past, based on his ideology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PROVIDING FOR AN ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

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

The PRESIDING OFFICER. Is there objection?

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

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

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

The PRESIDING OFFICER. The clerk will report the resolution.

The assistant legislative clerk read as follows:

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

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

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

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

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

H. CON. RES. 18

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

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

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

Mr. BYRD. I thank the Chair.

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

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

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

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

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

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

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

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

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

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

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