



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 103^d CONGRESS, FIRST SESSION

SENATE—Monday, August 2, 1993

(Legislative day of Wednesday, June 30, 1993)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable PATTY MURRAY, a Senator from the State of Washington.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

If any of you lack wisdom, let him ask of God, that giveth to all liberally, and upbraideth not; and it shall be given him.—James 1:5.

Eternal God, prominent, powerful, proud people find it difficult to acknowledge their need of Divine help. But the men and women of the Senate are dealing with cosmic problems which have global significance for millions of people. Help them to realize their own inadequacy and the limitations of legislation. Grant to the Senators grace to seek transcendent guidance.

Father in Heaven, grant special wisdom in dealing with bureaucracy in government which develops a life of its own. As cancer to the body, bureaucracy is to the institution. Feeding on healthy tissue around it, it is uncontrolled growth, self-perpetuating, and destructive. Give special wisdom, gracious God, in dealing with this voracious monster.

In Jesus' name Who is Life and Light. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 2, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PATTY MURRAY, a

Senator from the State of Washington, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. MURRAY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each, with the time until 10:30 a.m. to be equally divided between the Senator from Michigan [Mr. LEVIN], and the Senator from North Dakota [Mr. DORGAN].

Mr. DORGAN addressed the Chair.
The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. DORGAN. Madam President, today Senator LEVIN and I are going to send a letter to President Clinton that will be signed by six of us in the U.S. Senate, dealing with the subject of the North American Free-Trade Agreement. We send this to President Clinton as supporters of the President, as friends of this administration, but we send it hoping that this President will not send to this Congress the North American Free-Trade Agreement, or the United States-Mexico Free-Trade Agreement, for implementation.

We are saying in the letter:

We do not think it is possible to fix a fundamentally bad agreement, and we ask you today not to submit this agreement to Congress. We ask you to reject this flawed agreement and renegotiate one that represents the best economic interests of this country.

This trade agreement, called NAFTA, but more properly a free-trade agreement between the United States and Mexico, was negotiated by the Bush administration, inherited by the Clinton administration, and the Clinton administration says it intends to advance it. In my judgment, that would be a very serious mistake.

We have some experience with free-trade agreements. Some work, some do not. The most recent free-trade agreement was with Canada. My experience with that, coming from the agricultural area of this country, is that the United States negotiators of the United States-Canada Free-Trade Agreement just sold out the American Farm Belt, just sold out our interests, and they gained, I am sure, some other concessions for that in the agreement with Canada. But they sold out our economic interests in a way that is very detrimental to the Farm Belt. We are now trying to straighten out and deal with the problems of the United States-Canada Free-Trade Agreement, and we are trying, largely unsuccessfully, to solve those problems.

I regret the Bush administration saw fit to run off and try and develop another trade agreement before it had solved the problems in the United States-Canada Free-Trade Agreement. But, nonetheless, it did that.

Let me give some examples. We were promised in writing by the Reagan administration that the United States-Canada Free-Trade Agreement had an implicit understanding between the negotiators that there would not be a flood of grain coming down into our country. There would not be a flood of subsidized or unfair trade in the area of grain trade coming into our country, following the ratification of the United States-Canada Free-Trade Agreement. But, of course, that was not worth the paper it was written on. The minute that trade agreement was implemented by the Congress, we began seeing a flood of unfairly subsidized Canadian grain that competes in durum markets, wheat markets, barley markets in a

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

way that our farmers simply cannot compete with.

When we tried to respond to that, when we tried to seek the remedies under law that existed for that, we were thwarted at virtually every turn because of the agreements our trade negotiators had made with the Canadians.

So I have had some experience with the trail of broken promises in free-trade agreements.

For that reason, I am not anxious to see another trade agreement come to the floor of the Senate or the House. I might say that our Trade Ambassador, Mickey Kantor, is a breath of fresh air these days because at least he is weighing in, in a helpful way, with the Canadians. That certainly was not the case with Ambassador Hills, and certainly was not the case with Ambassador Yeutter.

I do compliment the current Trade Ambassador, Mickey Kantor. He is wrestling with these problems. Had the United States-Canada Free-Trade Agreement been negotiated properly, we would not have these problems to wrestle with. Now we are being asked, before we resolve those problems, let us go to Mexico, let us have a NAFTA or United States-Mexico Free-Trade Agreement. And the issue here with Mexico is the same as the issues with Canada except it differs in one important respect. We have radically dissimilar economies, Mexico versus the United States. When the European Community tried to put together a common market they had a real problem with Spain and Portugal because their economies were radically dissimilar to the rest. So they put a pile of money together and a long, long transition period and then began to phase them in. But not in this United States-Mexico Free-Trade Agreement. It says just latch together two economies, one of which has one-tenth the wage level as the other. The fact is, it will cause severe dislocations.

The issue, in my judgment, is not just agriculture—and there are plenty of agricultural issues with the United States-Mexican Free-Trade Agreement. Some say, "Well, agriculture is for this." Some of agriculture is for it. The big food companies are certainly for it.

This is a trade agreement written for and driven by the largest economic enterprises in this country. They want to produce elsewhere and sell in our markets. It is true with the giant food corporations, the food processing companies—it is true with virtually all of big American economic enterprise. They would love to produce where they can get dollar-an-hour wages and then sell back into our marketplace.

I recently read a report that most everyone, I am sure, read. It said 1,000 jobs were moved from Mexico to the United States. Gosh, it was in the news over an entire weekend, a big story: A

thousand jobs were moved from Mexico back to the United States, as if it were a trend. It is a very interesting public relations approach.

Here is a report put out by the Hemispheric Education Resource Center at Albuquerque, NM, a nonprofit organization. This report talks about 100,000 jobs—just those they have been able to chronicle—that have moved from the United States to Mexico. You have not seen too many stories about that, but when 1,000 jobs move from Mexico to the United States, it is news for 4 days. We have lost hundreds of thousands of jobs. This chronicles 100,000 of them. We are going to lose many, many more jobs unless this agreement is scuttled and a new agreement is developed.

Recently, Lester Thoreau, an economist, testified before a committee I serve on, and I asked him: Is it not inevitable that wages will be homogenized across the United States and Mexico with respect to these free-trade agreements?

Will we inevitably see lower wages in the United States as a result of trade agreements such as the Mexican agreement? And he said only for two-thirds of the American workers.

Let me repeat that. Will wage rates go down in this country inevitably as a result of agreements like the Mexican trade agreement? Only for two-thirds of the American workers, he says. The other third will probably see an increase in wages.

We are off now with an attempt to take what the Bush administration negotiated and add side agreements and hope that the side agreements will persuade enough people that a flawed trade agreement is sufficient so that they would vote for it.

Ann Richards of Texas used to talk about putting earrings on a hog. She says, "You can put earrings on a hog and call it Monique, but it is still a hog."

Side agreements from now until Sunday are not going to change the basis of this trade agreement. This trade agreement, in my judgment, will cost us hundreds of thousands of jobs, will erode the economic strength of this country, and is antithetical to everything we are talking about with respect to creating new jobs with the Clinton economic plan.

I would support the development of trade agreements in this hemisphere in which we can better compete with other trade blocks, the Pacific rim, the EC, and others. But to run off and create a trade agreement within this hemisphere in which we set up competition for jobs between us and Mexico makes no sense at all. That will weaken, not strengthen, our country.

My hope is that we would decide we will not advance this United States-Mexican Free-Trade Agreement, this administration will not push it, and we will develop a new trade strategy, one

in which you can tell the difference between the Bush administration and the Clinton administration. We need a new trade strategy that says it is in our interest to strengthen our economy by maintaining long-term manufacturing strength in our country's future.

The Hufbauer-Schott Report, which is the study most frequently cited to advance the claims in the United States-Mexico Free-Trade Agreement, is very interesting. I simply want to call this study to my colleagues' attention because it is important if you believe, as some argue, that rather than losing jobs, this United States-Mexico or NAFTA agreement will actually create new jobs in America. I say look carefully at the studies. The most frequently cited study to support the claim that this is good for America is the Hufbauer-Schott study.

An interesting point about this study: Two-thirds of the new investment in Mexico today comes from the United States. This authoritative study assumes that of the new investment in Mexico following the implementation of the United States-Mexican agreement, none of the new investment in Mexico will come from the United States—none, zero.

It assumes that as we implement this free-trade agreement, this country has full employment. The fact is, those who cite these kinds of studies to support the economic claims for this trade agreement, in my judgment, make a critical error. And we cannot afford an error, we cannot afford a mistake when we are talking about the kind of economy we have and the kind of economy we are trying to build.

We have plenty of trouble in this country, Madam President. We have to go about finding new jobs for the American people and create economic conditions in which we have expansion and new economic opportunity. But that will not happen if we advance fundamentally flawed trade agreements which will take from rather than give jobs to those in our future.

That is why Senator LEVIN and I and others of our colleagues have signed a letter to President Clinton respectfully asking that this administration consider not sending this trade agreement to Congress for ratification. We believe it would be a mistake. We are not some group of people who should be painted as isolationists who are opposed to all trade agreements. We do believe, however, that there is a difference between an agreement which represents our best economic interest and an agreement of the type we have seen that is being discussed today that is called NAFTA.

We hope, in the months ahead, as this is discussed, the administration will conclude it is not in the country's economic interest to advance this trade proposal.

I am pleased to be a coauthor of this letter with my colleague, Senator

LEVIN, from Michigan, who I think has done a lot of excellent work on trade and other issues and whose views I respect deeply.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Michigan controls the time from now until 10:30.

NAFTA IS UNFAIR FOR THE UNITED STATES

Mr. LEVIN. Madam President, I thank the Senator from North Dakota for the work he has done on NAFTA, the way he points out that a fundamentally flawed agreement cannot be cured with side agreements; it should be renegotiated. The letter which we are sending to the President with a number of our colleagues makes that point. NAFTA also should not be sold with studies that ignore half the picture, with studies such as the Department of Commerce report, which shows what jobs might be created State by State with additional exports to Mexico, ignoring totally imports from Mexico which reduce jobs here and leave us with a net job gain or job loss. But it is that net which should be looked at, not just jobs that might result from exports.

Madam President, there are a number of parts of the text of the North American Free-Trade Agreement that make it an unfair agreement to the United States. Today, I wish to point out a number of flawed provisions in NAFTA's auto section and urge the President to reopen the NAFTA text to correct these and other flaws.

First, as this chart shows, under NAFTA, Mexico's discriminatory trade laws against United States manufactured automobiles would not be eliminated for 10 years. Mexico discriminates against United States-assembled autos by requiring auto manufacturers to produce in Mexico in order to sell in Mexico and requiring manufacturers in Mexico to export \$1 worth of automobiles for each dollar's worth of imported automobiles. The result of these Mexican laws is that almost no United States-assembled cars can be shipped to Mexico. These discriminatory restrictions against United States-assembled cars are only slowly phased out over a 10-year period under NAFTA.

As you can see from this red line at the bottom of the chart, the United States has no equivalent restrictions.

Further, as the next chart shows, Mexico's current laws require auto manufacturers in Mexico to purchase 36 percent of the parts from Mexican parts manufacturers.

Mexico's discriminatory law would also not be eliminated for 10 years under NAFTA. It would drop from 36 to 34 percent for 5 years, and then drop 1 percent per year to 29 percent in the last year before termination.

Again, as you can see from this red line representing the United States, the United States has no such protection. Mexico's discriminatory laws have helped Mexico dramatically increase her manufacturing of automobiles.

If we allow discriminatory provisions to remain for even 1 year, that is a 1-year additional drain on American jobs. If this is supposed to be a balanced agreement, why do we allow Mexico's discriminatory restrictions to exist for 10 more years? Why do we not put the same restrictions on cars assembled in Mexico that they place on ours and phase out our restrictions over 10 years at the same pace that they phase out their restrictions on our cars?

It is tough enough to compete against \$1 an hour labor and weak enforcement of environmental, safety, and child labor laws without tolerating discriminatory restrictions against our products for even 1 more year.

President Clinton was right on February 22, 1993, when he stated that in terms of international trade agreements "we can no longer afford to wait for 10 years while someone does something to us that we do not respond to." NAFTA's auto provisions do not meet that guiding principle.

Second, NAFTA should contain a North American content requirement high enough to ensure that vehicles and parts passing duty free across the Canadian and Mexican borders actually have been built in the three NAFTA countries. The NAFTA rule of origin formula is deficient by allowing many nonmanufacturing expenses, such as royalties and interest on debt, to be counted toward the value of the vehicle.

Third, certain provisions contained in the NAFTA text will encourage small car and light truck production to relocate from the United States to Mexico. Relative to cars, the NAFTA text allows cars produced in Mexico to be counted as domestic American cars after 3 years for purposes of corporate average fuel economy [CAFE] standards. This will provide American automakers an incentive to shift small car production to Mexico since they no longer would need to make the most fuel efficient cars in the United States to help them meet overall fuel economy standards for their domestic fleet.

This chart shows that almost half of the Big Three's domestic fleet is made up of small cars, the manufacture of which could move to Mexico and still count as domestic under NAFTA.

Why would we make such a huge unreciprocated concession to Mexico, and why would we allow this concession to be phased in within 3 years when Mexico will not phase out its discriminatory practices against our vehicles for 10 years?

Relative to light trucks, the reduction of the United States tariff on light

trucks from 25 to 10 percent immediately and to zero in 5 years combined with Mexico's low wages also provides a strong incentive for light truck production to be established or relocated to Mexico.

Notice that our truck tariff is eliminated over 5 years. Contrast that to the phaseout or phasedown over 10 years that are allowed Mexico for their discriminatory practices against our products. It is beyond me why American negotiators would agree to such unequal incremental phaseouts. That is not a level playing field.

Fourth, the auto tariff phaseout under NAFTA is even more unfairly skewed in Mexico's favor. The U.S. tariff on imported autos of only 2½ percent is immediately reduced to zero under NAFTA. Mexico's auto tariff stands at 20 percent and will be reduced only to 10 percent in the first year, and then only slowly phased out to the end of the century.

These are just some of the unfair auto provisions in NAFTA. And they must be considered in the broader context of Mexico's growing auto production.

Mexico's auto production and auto sector employment have grown by 833 percent from 1982 to 1991. Not only is Mexico's auto market undergoing extraordinary expansion, it is increasingly exporting its vehicles to the United States and Canada. Mexican car production for export grew from only 18 percent in 1986 to 478 percent by 1991.

This means that most of the growth in Mexico's auto market production is coming to the United States and Canada, not staying in Mexico for consumption. Mexico's exponential growth in auto production and employment is coming at a time when American auto production and employment is experiencing decline and overcapacity. The United States auto industry lost 33 percent in auto production and 24 percent in auto sector employment over the same period.

The argument is made, look, you have lost jobs before NAFTA—and that is true. It is true because we allowed discriminatory restrictions against American-made cars without placing equivalent restrictions on cars made in Mexico coming here.

The answer is not to make Mexico's discriminatory provisions part of our law under NAFTA and just phase them down or out over 10 years. The answer is to place the same restrictions on Mexican-made cars that they place on United States cars and to phase our restrictions out on their cars at the same pace that they phase their restrictions out on ours.

So, Madam President, under NAFTA, Mexican auto protections and restrictions would be allowed to remain in place on a gradual phase down basis for 10 years while the United States has no equivalent protections or restrictions.

We have already lost in this country 2½ million manufacturing jobs since 1979. NAFTA will only add to that tragic number. We should be looking for ways to create manufacturing jobs in the United States, not shift them to low-wage countries. NAFTA will be draining more auto manufacturing jobs from the United States to Mexico, and that is why the side agreements will not do the job. The NAFTA text needs to be reopened so that its inherent flaws can be corrected.

Madam President, I thank the Chair. I thank my good friend from North Dakota for his great effort in this regard.

I yield the floor.

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, parliamentary inquiry: Would the Chair please state the present parliamentary situation?

The ACTING PRESIDENT pro tempore. The Senate is conducting morning business until the hour of 10:30.

Mr. BAUCUS. Madam President, seeing no other speakers who wish to speak on the subject, I ask unanimous consent to speak as if in morning business for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, thank you.

REACTION TO TAX CONFERENCE

Mr. BAUCUS. Madam President, I rise today to congratulate Chairman MOYNIHAN and Chairman ROSTENKOWSKI on the conference report to the President's budget plan.

The final agreement on the package is now imminent, and without their courage, their leadership, this monumental package would not have been possible. We all owe them a great debt of gratitude.

But, Madam President, in the conscientious debate over one particular portion of that budget—the energy tax—a number of misconceptions have arisen that I feel compelled to correct.

First, I believe this Nation would benefit from a broad-based energy tax as the President originally proposed. I was and am prepared to vote for a broad-based energy tax. Unfortunately, that is not what passed the Senate. That is not what is included in the conference report. Instead, the broad-based tax has been replaced with a simple gasoline tax about which I have serious reservations. A gas tax may be simple to administer, but the increased gas tax in this bill has none of the environmental and conservation virtues of a broad-based tax. Nevertheless, it is set at a very high level which would be very burdensome for consumers. The gas tax does little to stimulate con-

servation and protect the environment. Drivers do not have choices of alternative fuels and most have no choice but to drive to work and to get groceries. By and large, they just pay the tax and do not change their behavior. So there are no real environmental benefits. The gasoline tax in the conference report is a revenue plug, not an environmental tax.

Second, the most important reason that I oppose the gas tax is that it is a tax directly upon the middle class, something we pledged to avoid in the election. If I was convinced we had exhausted all other options—spending cuts, taxes on the wealthy, and taxes on large corporations to control the deficit—then I would be willing to look at taxes on the middle class.

But, Madam President, we have not exhausted any of those options. I believe there is room for still more spending cuts. There are good programs like the superconducting super collider that I have supported in the past that I will vote to cut this year because we simply do not have the money. We will soon be forced to do more with entitlements.

There is also revenue to be gained from cutting corporate loopholes like the so-called section 936 provision. I have difficulty supporting a tax on middle class to pay for corporate loopholes. Most troubling is that we have cut the gas tax on large corporations with more than \$10 million in taxable income below that paid by individuals. That rate could easily be made equal to the top individual rate to generate billions of dollars.

I believe there is also more money that could come from the wealthy. But all of the interests I have just mentioned are defended by powerful lobbies and are thus hard to cut or tax.

The middle class have no lobbyists. If we had squeezed more deficit reduction from spending cuts, I would support taxes on the middle class. But with more to be done in each of those areas, I have serious concerns about taxing the middle class.

Finally, as President Clinton argued during the campaign, the gas tax is simply a "bad tax." It is regressive, and it falls most heavily on individuals living in rural areas. There has been a rash of misinformation and irrelevant information on this issue. So I would like to introduce a table from the Department of Transportation indicating per capita gas consumption by States and a study on the topic from the Congressional Budget Office.

I ask unanimous consent that this material be printed in the RECORD.

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

Consumption ranked by State

| | |
|---------------|-----|
| Wyoming | 987 |
|---------------|-----|

| | Gallons per capita |
|-----------------------------|-----------------------|
| North Dakota | 707 |
| Arkansas | 677 |
| Montana | 673 |
| Georgia | 670 |
| South Dakota | 669 |
| New Mexico | 668 |
| Alabama | 652 |
| Missouri | 635 |
| Oklahoma | 623 |
| Nevada | 620 |
| Mississippi | 615 |
| Kentucky | 613 |
| Nebraska | 609 |
| South Carolina | 608 |
| Indiana | 602 |
| Vermont | 595 |
| Idaho | 590 |
| Tennessee | 584 |
| Kansas | 578 |
| Texas | 578 |
| Iowa | 572 |
| North Carolina | 571 |
| Maine | 569 |
| Delaware | 559 |
| Virginia | 555 |
| West Virginia | 555 |
| Arizona | 539 |
| Washington | 534 |
| Minnesota | 530 |
| Florida | 521 |
| United States average | 519 |
| Louisiana | 518 |
| Wisconsin | 514 |
| Michigan | 509 |
| New Hampshire | 507 |
| Utah | 504 |
| Ohio | 494 |
| Maryland | 491 |
| Colorado | 491 |
| New Jersey | 488 |
| Oregon | 485 |
| Alaska | 482 |
| California | 479 |
| Illinois | 457 |
| Connecticut | 457 |
| Pennsylvania | 456 |
| Massachusetts | 427 |
| Rhode Island | 407 |
| Hawaii | 369 |
| New York | 348 |
| District of Columbia | 282 |

Cost per capita ranked by State

| | Percent of personal income |
|----------------------|-------------------------------|
| Wyoming | 0.413 |
| Arkansas | .320 |
| Mississippi | .319 |
| New Mexico | .319 |
| North Dakota | .306 |
| Montana | .306 |
| South Dakota | .295 |
| Alabama | .293 |
| Oklahoma | .281 |
| South Carolina | .278 |
| Kentucky | .271 |
| Georgia | .270 |
| West Virginia | .269 |
| Idaho | .268 |
| Missouri | .246 |
| Tennessee | .246 |
| Indiana | .244 |
| Louisiana | .241 |
| Utah | .240 |
| North Carolina | .236 |
| Texas | .236 |
| Nebraska | .233 |
| Vermont | .231 |
| Arizona | .230 |
| Iowa | .228 |
| Maine | .228 |
| Nevada | .223 |
| Kansas | .218 |

| | Percent of personal income |
|-----------------------|----------------------------|
| Wisconsin | .200 |
| Virginia | .197 |
| Florida | .196 |
| Oregon | .195 |
| Ohio | .194 |
| Minnesota | .193 |
| Washington | .191 |
| United States average | .191 |
| Michigan | .190 |
| Delaware | .190 |
| Colorado | .178 |
| California | .164 |
| Pennsylvania | .164 |
| Alaska | .163 |
| New Hampshire | .161 |
| Maryland | .156 |
| Illinois | .154 |
| Rhode Island | .146 |
| New Jersey | .135 |
| Massachusetts | .130 |
| Hawaii | .127 |
| Connecticut | .124 |
| New York | .108 |
| District of Columbia | .078 |

CBO STUDY—ADDITIONAL POLICY CONCERNS IN THE DESIGN OF TAXES

In comparing energy taxes or any other taxes, one should also consider the distribution of the tax burden among income groups and regions, the effects of the tax on specific energy-using industries and producers of energy, and the cost of administering the tax.

EFFECTS OF ENERGY TAXES AMONG INCOME GROUPS

Energy taxes will raise the cost of energy consumed by households and industry. Households will ultimately also pay for the increased energy costs to industry in the form of higher prices of goods and services that use energy in their production and distribution. In short, an energy tax is a form of a tax on consumption with different impacts on consumers, depending on the proportions of different goods and services they consume.

One measure of the tax burden is the ratio of annual taxes to the cash income of families. By this measure, taxes on consumption are regressive; the tax burden on low-income families as a portion of their annual income is larger than the tax burden on high-income families. The reason is that, in general, families with higher incomes consume a smaller fraction of their income in any year than do lower-income families.

The use of annual data, however, overstates the degree to which consumption taxes disproportionately affect low-income families. People whose income is temporarily low typically do not reduce consumption by as much as their drop in income. At the same time, people whose income is temporarily high save a large proportion of their increase in income. People consume a smaller fraction of their income in their middle years, when their earnings are relatively high, than they consume when young or old. Economists who have measured consumption taxes on a lifetime basis find that they are still regressive, but not as regressive as annual measures show.

Energy taxes can be more or less regressive than more broadly-based consumption taxes, depending on whether the ratio of energy consumption to total consumption declines or increases with income. The distributional burden of energy taxes also depends on the relative rates applied to different forms of energy. Taxes on consumption of energy products that account for a relatively large share of expenditures of low-income families (such as electricity) are more regressive than taxes on energy products, which ac-

count for a relatively larger share of consumption by middle-income families of items such as gasoline.

CBO has made preliminary estimates of the distributional effect among income groups of increases in energy taxes. These estimates distribute the burden of direct increases in costs of energy products (home-heating oil, natural gas used by households, electricity, and highway motor fuels) to families in proportion to their consumption of those products. The estimates then distribute the burden of increases in the costs of industry to families in proportion to their consumption of all goods and services (see Table 2).

TABLE 2.—ENERGY TAX AS PROPORTION OF CASH INCOME
(In percent)

| | Families ranked by income quintile | | | | |
|-------------------------------------|------------------------------------|--------|-------|--------|-----|
| | Bottom | Second | Third | Fourth | Top |
| President's Btu tax | 1.1 | 0.7 | 0.6 | 0.5 | 0.3 |
| Btu tax | 1.1 | .7 | .6 | .5 | .3 |
| Oil excise tax | 1.0 | .7 | .6 | .5 | .3 |
| Motor fuels tax | 1.0 | .7 | .6 | .5 | .2 |
| Ad valorem energy tax on households | 1.3 | .8 | .6 | .5 | .2 |

Note.—The President's Btu option is simulated at 1994 levels with the tax fully phased in. All options increase revenues by the same amount. The tax change includes both the direct tax on energy consumed by households and the indirect effects of taxes on energy consumption by businesses. It also includes the effects of increased benefits and lower taxes that result from indexing COLA's and income tax exemptions, the standard deduction, and bracket widths to reflect the effect of energy taxes on the consumer price index. Family rankings include an adjustment for differences in family size.

Source: CBO tax simulation model. Consumption data from U.S. Bureau of Labor Statistics, Consumer Expenditure Survey and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

Although all of the energy tax alternatives are regressive when measured as a percentage of income, some are less so than others. For proposals that raise the same total revenue, an ad valorem tax on final energy consumption would impose the largest tax burden relative to income on families in the lowest income quintile and a motor fuels tax or oil excise tax would impose the smallest burden. The president's proposal and a general Btu gas would impose approximately the same burden as a share of income on the lowest quintile—less than an ad valorem tax on all energy, but more than a motor fuels tax. All of the alternatives would impose approximately the same burden on households in the top three quintiles.

All the proposals except for the ad valorem energy tax increase taxes as a percentage of total expenditures by about the same amount in each income quintile (see Table 3). Thus, the President's proposal has about the same distributional burden as a general tax on all consumption. An ad valorem energy tax would be slightly more regressive than a general consumption tax.

The distribution of the tax burden among income groups depends on the entire gas system, and just the relatively small share of total taxes that the proposed energy tax or an alternative consumption tax will raise. It is possible to offset the impact on low-income families by a combination of other changes in tax and spending programs. For example, the Administration's budget proposal will assist some low-income families by increasing the earned income tax credit and will raise most of its additional revenue from high-income by increasing income taxes on tax returns with taxable income in excess of \$115,000.

TABLE 3.—ENERGY TAXES AS A PROPOSITION OF TOTAL EXPENDITURES
(In percent)

| | Families ranked by income quintile | | | | |
|-------------------------------------|------------------------------------|--------|-------|--------|-----|
| | Bottom | Second | Third | Fourth | Top |
| President's Btu tax | 0.5 | 0.5 | 0.6 | 0.6 | 0.5 |
| Btu tax | .5 | .5 | .6 | .6 | .5 |
| Oil excise tax | .5 | .6 | .6 | .6 | .5 |
| Motor fuels tax | .5 | .6 | .6 | .6 | .5 |
| Ad Valorem energy tax on households | .6 | .5 | .6 | .5 | .4 |

Note.—The President's Btu option is simulated at 1994 levels with the tax fully phased in. All options increase revenues by the same amount. The tax change includes both the direct tax on energy consumed by households and the indirect effects of taxes on energy consumption by businesses. It also includes the effects of increased benefits and lower taxes that result from indexing COLA's and income tax exemptions, the standard deduction, and bracket widths to reflect the effect of energy taxes on the consumer price index. Family rankings include an adjustment for differences in family size.

Source: CBO tax simulation model. Consumption data from U.S. Bureau of Labor Statistics, Consumer Expenditure Survey and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

EFFECTS OF ENERGY TAXES ON REGIONS

Alternative proposals for taxing energy will affect households in various regions of the country quite differently, depending on their patterns of direct consumption of energy. Households in the Northeast, for example, use much more home heating oil than households in other regions; households in the West and South use somewhat more gasoline (see Table 4).

All of the taxes increase direct energy costs more for rural households (about 15 percent of the population) than for urban households. Moreover, all of the taxes except for the motor fuels taxes raise costs relatively less for households in the West. The President's proposal and an oil excise tax would raise costs relatively more for households in the Northeast.

The direct impact on households generally is largest for the ad valorem on final energy consumption because final consumers pay the entire tax. In contrast, because businesses pay a portion of the other taxes, they affect the prices of all goods that households consume and not just energy. The President's proposal and the single-rate Btu tax have the smallest direct effects on households. Because these taxes include both industrial uses and coal (which is mostly used by industry and affects households directly only through purchases of power generated by coal-fired utilities), they have the smallest direct effect on household energy costs.

TABLE 4.—INCREASED DIRECT ENERGY COSTS PER HOUSEHOLD
(In 1994 dollars)

| | Urban Households | | | | | Total |
|-------------------------------------|------------------|----------|-------|------|-------|-------|
| | North-east | Mid-west | South | West | Rural | |
| President's Btu tax | 107 | 103 | 102 | 94 | 128 | 105 |
| Btu tax | 98 | 98 | 94 | 83 | 111 | 96 |
| Oil excise tax | 130 | 116 | 122 | 119 | 169 | 128 |
| Motor fuels tax | 157 | 170 | 181 | 179 | 219 | 179 |
| Ad Valorem energy tax on households | 240 | 243 | 241 | 206 | 289 | 241 |

Note.—These taxes all raise the same amount of revenue, but vary in the degree to which households pay the higher fuel costs directly. For example, the Ad Valorem tax would impose a larger direct burden on households, but would not impose a larger total burden when indirect effects on industry are taken into consideration.

Source: See table 2 for sources.

INDUSTRIES

Another way to see which individuals would be most affected by particular energy taxes is to look at which industries are most affected. Just because an industry uses a lot of energy, it does not mean it will be harmed by higher energy costs. As I mentioned earlier, the real losses that an industry and its

employees will incur will depend on the ability of that industry to switch to lower-taxed fuels (or conserve energy) and the competitive circumstances that would allow them to pass any higher costs on to consumers.

Excluding the energy-producing and conversion sectors, iron mining, chemicals, primary iron and steel manufacturing, and plastics (in that order) would experience the biggest increase in their output costs resulting from any across-the-board increase in energy prices. The competitive ability of each of these industries to pass on higher taxes is probably limited, given the global scope of their markets.

However, the technical ability of each industry to switch out of high-taxed fuels at low cost (either to low-taxed fuels or to capital and labor by way of conservation) would vary significantly. Plastics and chemicals that depend on oil inputs would have little alternative and would be most harmed by oil taxes unless, as in the President's proposal, they are exempt. Other industries that use energy mainly as a source of heat could switch more easily among energy sources over time.

ENERGY PRODUCERS

A further concern about distribution relates to how much of the tax consumers pay (in terms of higher post-tax energy prices) and how much domestic energy producers pay (in terms of lower pretax energy prices). The relative incidence of the tax on energy consumers and producers will vary with the particular forms of energy being taxed and the changes in demand for energy that result from changes in relative energy prices to users at the end point.

Costs to any particular group of fossil energy producers will not be commensurate with the size of the tax on that energy source; they will generally be much less. For example, under the President's proposal, the Btu tax on petroleum would have a minimal effect on crude oil prices to producers and demand for domestic crude oil, since the marginal source of oil is imported and domestic prices are determined by world markets. As a result, the burden of the tax would fall heavily on oil consumers.

The burden of any tax on natural gas is likely to be split among producers and consumers if relative taxes are such that natural gas demand would fall. Gas supply is not very sensitive to changes in price, so pretax prices to natural gas producers could drop if the demand for gas fell. However, the net effect of the President's plan on the demand for gas is not clear. The natural gas market may pick up some new customers who switch from oil. At the same time, it will be threatened by increased competition from electricity.

Despite high increases in coal prices under the Clinton and other plans, pretax coal prices would change little, since coal supply responds nicely to price changes. Coal production would fall if the demand for coal dropped, which would increase the burden on coal producers. However, demand for coal itself may not change under the energy tax described by the President or other broad-based tax proposals. The percentage increase in coal prices with a new tax is not as important as the resulting percentage increase in electricity prices relative to competing energy forms.

THE COST OF ADMINISTRATION

In general, the costs of administering any tax are minimized by collecting the tax from fewer sources. For energy, this process would mean assessing the tax on crude oil or re-

fining products at the refinery, on natural gas at the hookup to trunk pipelines, coal at the minemouth, and electricity at the utility.

Further cost advantages exist where the new tax can take advantage of existing mechanism for collecting taxes (for example, superfund taxes on oil, black-lung taxes on coal, and federal excise taxes on gasoline).

Some important considerations affect the cost of administering any broad-based energy tax. A Btu tax assessed on crude oil at the refinery gate would be easier to administer than one on all products (unless, perhaps, the unit tax would vary with the heat content of every oil shipment). Petroleum product taxes assessed upstream (at the refinery or some wholesale distribution point) would be easier to administer than those assessed at the retail level, since there would be fewer collection points to monitor. The same consideration applies to coal taxes. If collected at the minemouth, they could be relatively cheap to administer. If the unit taxes varied with the heat content of each coal source, however, the costs would rise. One cost-effective point for taxing natural gas would be at the place it enters the main interstate or intrastate trunk pipelines, since it would leave only a small number of pipeline companies to monitor. Another point might be at the city gate.

A VALUE-ADDED TAX

Taxes imposed on energy use primarily affect consumers by increasing the cost of operating motor vehicles, heating homes, and using electricity. Moreover, because the production and distribution of other goods for consumption require energy, energy taxes raise the prices of these goods too, but by much less.

Broad-based consumption taxes such as the retail sales tax or the value-added tax (VAT) are levied on consumption in a more evenhanded way. Because they do not single out energy use, they have a much more neutral effect on consumer behavior. But by having a more neutral effect on behavior, they do not encourage energy conservation.

A value-added tax is similar to a retail sales tax, but it is collected in a different way. Instead of collecting the tax on consumer purchases all at once at the retail level, a VAT collects the tax in stages as goods and services are produced and marketed. Collecting the VAT in stages discourages tax evasion and allows businesses to recoup the tax they pay on their purchases.

An important disadvantage of a VAT is the high cost of administering and complying with the tax. Based on typical costs for administering and complying with a VAT in Europe, CBO estimates that the annual cost in the United States would be \$5 billion to \$8 billion, involving at least 7 million businesses. Thus, a VAT would not be particularly cost effective if it were adopted at a rate that only brought in the revenue that the President has called for from his proposed energy tax (\$22 billion annually).

In contrast, energy taxes would be collected from a relatively small number of energy producers, refiners, and utilities. In addition, the energy tax could be "piggy-backed" on the existing mechanism for tax collection (including superfund taxes on oil, black-lung taxes on coal, and federal excise taxes on motor gasoline) and collected at a relatively low cost. Granting tax exemptions or tax rebates to energy users for any reason, however, would increase the complexity of an energy tax and add to the costs of administering and complying with it.

CONCLUSION

No one likes taxes, but if we are to deal meaningfully with the rising deficit, we

must be prepared to swallow the strong medicine of reduced spending, increased taxes, or both. A broad-based energy tax can be a constructive component of a tax package, with the added benefit of contributing modestly to environmental and energy security goals. An even broad-based value added tax could also contribute constructively to increased tax revenues, although at the level of revenues proposed by the President (\$22 billion in 1998), a VAT would not be cost-effective for the United States.

Mr. BAUCUS. The Department of Transportation chart demonstrates that citizens in rural States like Arkansas, North Dakota, South Dakota, Wyoming, and Montana, are forced to consume two to three times as much gasoline as citizens of New York and the District of Columbia. Thus, citizens of rural States may pay two to three times as much under a gasoline tax. The CBO confirms this point by noting that citizens of rural States, on average, pay 20 to 25 percent more than citizens of urban States under a gas tax. That simply is not fair.

Some have offered statistics on commuting time and other factors and argue that gas prices are relatively low, to counter this point. But those arguments simply do not hold water. Commuting time has little to do with the actual burden of gasoline taxes, since much of the commuting, particularly in urban areas, is done by means other than driving, such as the subway.

The fact that gas prices are now low is of little relevance. The prices may be low now; remember, this is a 5-year budget package. Will prices be low in 5 years? Even if they were, is that a reason in and of itself to apply a regressive and unfair tax? I do not think so.

If we are truly trying to reduce the deficit, we should look for cuts in taxes that fairly distribute the burden, not those that unfairly hit one area or another.

For all those reasons, Madam President, I have argued against the gasoline tax. But this conference report has a 4.3 cent per gallon gasoline tax in it, and I will vote for the package. I will vote for it because I do not want to let perfection be the enemy of the good.

The deficits we have run up have already laid a \$4 trillion debt on the backs of our children. Fast action on the deficit is the best way to increase business confidence and keep interest rates low so jobs can be created by expanding businesses, and people can refinance their mortgages. To achieve those important goals, I will tolerate the small gas tax but, make no mistake about it, the gas tax is a weak spot in the package, and I have serious concerns about any future expansion of it.

TAKING STOCK OF THE CLEAN AIR ACT AMENDMENTS OF 1990

Mr. BAUCUS. Madam President, earlier this year when I became Chairman

of the Committee on Environment and Public Works, I decided that before the committee jumped head-first into reauthorizing our various environmental statutes, we needed to take a step back—to evaluate the progress we have made over the last several decades in meeting our environmental challenges. What works? What does not work? These are the questions that we needed to address.

Since the beginning of this year, our committee has held a series of what I call taking stock hearings. We have heard from representatives of government, industry, environmental groups, and many others. These hearings have been critical in helping me and other members of the committee define what obstacles we face and, more importantly, what our environmental priorities should be in the years ahead.

These hearings also demonstrated two very important matters: First, that while we have made a great deal of progress during the last 20 years in tackling many of our environmental problems, we now face new ones which are more subtle, more complex, and more politically challenging than those we have faced in a very long time.

At our last taking stock hearing, held several weeks ago, we heard from two former EPA Administrators—William Ruckelshaus and Russell Train—as well as the two coauthors of President Clinton's Commission on Sustainable Development—Jonathan Lash and David Buzzelli.

While they disagreed on many issues, there was a striking consensus among the panelists that, of all our environmental statutes, the Clean Air Act is one of the most effective laws Congress has passed to improve the quality of our environment.

As one of the primary sponsors of the 1990 Clean Air Act Amendments, I was particularly gratified by their evaluation of our last major environmental achievement. But, that assessment, frankly, sounded too good to be true.

The Clean Air Act has been successful in addressing some of the major environmental problems in our Nation, such as virtually wiping out air pollution caused by lead—a highly toxic chemical. But, the fate of the Clean Air Act Amendments of 1990 is still up in the air—the bright promise of that innovative legislation remains largely unfulfilled.

Therefore, the Environment and Public Works Committee will undertake a serious review of the progress being made in implementing the Clean Air Act amendments. Tomorrow, the committee will begin an exhaustive series of oversight hearings on the implementation of the Clean Air Act Amendments of 1990. I asked Senator LIEBERMAN, chairman of the Subcommittee on Clean Air and Nuclear Regulation, to begin these hearings

with a review of the implementation of particular titles of the act, looking first at State implementation plans. When we return in September, the full EPW Committee will continue with a comprehensive oversight hearing looking at a broader range of implementation issues.

Madam President, this is not the time, in my opinion, to pat ourselves on the back for passing an effective law or, alternatively, to point fingers where the job has not been done to our satisfaction. Rather, it is time to get to the bottom of what is working and what is broken in the process of implementing the Clean Air Act amendments, and figure out how to fix that break.

Let us face it, we passed an ambitious and groundbreaking law that placed a tremendous burden of execution on the Environmental Protection Agency. Within the first 2 years alone, EPA was required to issue 175 regulations, write more than 30 guidance documents, conduct 50 research efforts, and prepare 25 reports to Congress.

One of the most innovative provisions of the law, set up a market-based system of allowances for trading emissions that cause acid rain. The first auction was held last March. Furthermore, EPA has successfully implemented a program to phase out CFC's, which are highly destructive of the stratospheric ozone layer. In doing so, EPA has both helped to solve a serious domestic problem and lived up to the international commitments of the United States in the Montreal protocol. On both these efforts, EPA and industry worked together and consequently met deadlines without major litigation or bureaucratic holdups.

However, because implementation of the other major provisions of the law has been delayed, air pollution continues to get worse. The historical trends paint a dark picture. From 1982 to 1991, only minimal gains were made in reducing emissions of five of the six most prevalent air pollutants. For example, during that time, ozone emissions decreased only 13 percent, particulate matter emissions decreased a mere 5 percent, and sulfur dioxide emissions decreased an abysmal 2 percent.

No one believed that we could reverse the horrible trends in air pollution overnight. In fact, the Clean Air Act amendments recognized that to make significant progress would take time. But, the work must begin in earnest now. It should have started sooner.

So today I challenge the EPA and all the participants involved in Clean Air Act implementation to take stock of whether they have done all they can to live up to their responsibilities under the Clean Air Act. I challenge Administrator Browner to dig deep into her Agency's resources and make a firm commitment to me and to the Congress that implementation of the Clean Air

Act will be a top priority for her at EPA.

And I will commit myself to work with other members of my committee, and my fellow Members of Congress to focus our attention on the Clean Air Act amendments and find a constructive way to improve the implementation process. I do not believe that the answer to this problem is to rethink our original goals for the act, or to minimize the burdens on any of the responsible parties.

On the contrary, in the spirit of the Clean Air Act amendments themselves, it is time for us to be creative and to rededicate ourselves to getting the job done. If we do not, then all our efforts in enacting the Clean Air Act Amendments of 1990 can be chalked up to simply blowing smoke.

Mr. BINGAMAN addressed the Chair. The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Madam President, I ask unanimous consent that I be allowed 10 minutes as in morning business, to be charged against the time that is reserved for the first nomination to be considered today, which the Senator from Minnesota is managing.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

THE UNITED STATES TRADE IMBALANCE WITH CHINA

Mr. BINGAMAN. Madam President, I am here to speak about another of our trade problems. A few minutes ago, the Senator from North Dakota and the Senator from Michigan were here talking about their concerns about the North American Free-Trade Agreement and the potential loss of jobs that would result from that. I share some of those concerns, but I am here today to talk about the trade imbalance that we have developed with China.

Madam President, I chair a subcommittee of the Joint Economic Committee which, each year, receives a report from the Central Intelligence Agency about the China economy. This last Friday, we received that report for this year. We had a hearing on the subject, and the growth in our trade imbalance with China, I believe, is a cause for concern for all of us here in the Congress and in the Government.

The United States bilateral trade deficit with China increased this last year, 1992, to \$18.2 billion, a rise of 42 percent over 1991.

In 1991, our trade imbalance was \$12.7 billion. United States-China trade relations were in rough balance in the early 1980's, and in 1982 the United States ran a modest surplus with China. In 1983, we began running a modest deficit. In 1985, the deficit was only \$6 million.

But by 1986, that bilateral trade deficit had taken a quantum leap to \$1.4

billion, and it has been leaping every year since then. It doubled to \$2.8 billion in 1987 and increased to \$3.5 billion in 1988. And, in 1989, the first year that President Bush was in office, our bilateral trade deficit with China was \$6.2 billion.

A year later it went to \$10.6 billion. Again in 1991, the deficit was at \$12.7 billion, and in 1992 up over \$18 billion.

Madam President, this chart which I have here today, I think reflects that there has been some very modest increase in imports during that period. But there has been a very dramatic increase of imports from China to the United States.

The trend, I would also point out to my colleagues, is no accident. It is apparent that Chinese Government policy has been devoted very substantially to an export-led growth policy. Exports have been promoted. Imports have been restricted. And the primary target for those exports has been the U.S. market.

We have complained about unfair trade practices, high tariff, nontariff barriers, quotas, absolute bans on some of the goods we would sell to China; arbitrary changes in the laws and regulations, restricted access to the domestic markets, and violation of intellectual property rights.

We have had a number of negotiations with China regarding unfair trade policies. And the Government in Beijing has several times promised to liberalize some of those policies. So far that has been mainly promises.

China's economic situation today I fear holds the likelihood that that trade deficit we have with China will do nothing but continue to increase over the next several years. China has been growing at an unsustainably rapid rate and inflationary pressures have been building up and threatening to get out of control.

The CIA estimates that urban inflation in China increased about 30 percent during the last 12 months. The Government has already taken steps to cool this overheated economy, and one of the traditional steps that they take is to further limit imports. Indeed, the CIA testified before our committee this last Friday that because of this expected change in policy, this expected plan to limit imports, we can expect the deficit to continue growing and perhaps reach as much as \$24 billion to \$25 billion in this calendar year.

Madam President, one of the most disturbing things about the deficit we have with China in our trade relations is that it is out of sync with the trade relations China has with the rest of the world. With the rest of the world last year, China ran a very small trade surplus and, in fact, this year it is running a trade deficit with the rest of the world. That is at the same time that China's trade deficit with the United States continues to grow.

Madam President, I raise this issue for people to focus on at this point because China is the 900-pound gorilla in the world economic picture today. China was the 11th largest trading nation in 1992, but according to the International Monetary Fund it was the third largest economy in the world.

At the same time that it is a relatively large economy relative to the size of its economy—it has just begun to export—only 7 percent of its economic activity is presently engaged in trade.

There is a tremendous opportunity on China's part to increase its trade with the rest of the world, and if present trends continue, that increased trade will come at the expense of the United States.

Our President was recently in Japan talking about the uneven trade relations with Japan and the chronic trade deficit of \$50 billion we are running with that country.

I would suggest today, Madam President, that the trade deficit we run with Japan may well be eclipsed one of these years by our trade deficit with China unless we take strong action to come to grips with this problem at this point.

Madam President, I ask unanimous consent that a table describing our trade deficit with China from the period 1984 through 1993 be printed in the RECORD at this point.

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

U.S. trade deficits with China, 1984-93

| | |
|-------------------------------|--------|
| 1984 (million) | \$60.0 |
| 1985 (million) | 6.0 |
| 1986 (billion) | 1.4 |
| 1987 (billion) | 2.8 |
| 1988 (billion) | 3.5 |
| 1989 (billion) | 6.2 |
| 1990 (billion) | 10.4 |
| 1991 (billion) | 12.7 |
| 1992 (billion) | 18.2 |
| 1993 (billion—estimate) | 23.0 |

Mr. BINGAMAN. Madam President, I appreciate the courtesy of the Senator from Minnesota, and I yield the floor.

**IRRESPONSIBLE CONGRESS?
HERE'S TODAY'S BOXSCORE**

Mr. HELMS. Mr. President, as anyone even remotely familiar with the U.S. Constitution knows, no President can spend a dime of Federal tax money that has not first been approved by Congress, both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty of Congress to control Federal spending. And to determine how much it shall be. Congress has failed miserably for about 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which

stood at \$4,352,487,844,872.15 as of the close of business on Thursday, July 29. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is \$16,945.05.

**TRIBUTE TO COL. LAWRENCE C.
MOHR, M.D.**

Mr. THURMOND. Madam President, I rise today to pay tribute to Col. Lawrence C. Mohr, M.D., a great man and outstanding physician, who recently retired from a long and distinguished Army career.

I was honored to attend Dr. Mohr's retirement ceremony last week at the White House, where he has served as physician since 1987. In addition to attending to Presidents Reagan, Bush, and Clinton, Dr. Mohr has been my personal physician for a number of years. In that time, I have gotten to know him very well. In the course of my remarks at the White House, I was pleased to praise the good doctor for his many years of unparalleled service, for his excellent record as a competent physician, and for his service as a combat soldier before becoming a doctor.

We are all proud of Dr. Mohr's contributions to the U.S. Army and our great Nation. He is a man of high character who serves as a shining example of dedication, compassion, and professionalism for others to follow. It is my hope that this most capable doctor will come to South Carolina and continue his practice there. I know that he would be a welcome addition to my State's already excellent medical community.

Madam President, Dr. Mohr will certainly be missed by his peers, his patients, and by me; but, I wish him and his family good health and happiness in the years to come. I ask unanimous consent that a history of Dr. Mohr's impressive Army career be included in the RECORD following my remarks.

HISTORY OF MILITARY SERVICE

(By Col. Lawrence C. Mohr, M.D., U.S. Army)

Colonel Lawrence C. Mohr was born on 8 July 1947 in Staten Island New York. He entered the United States Army in 1966 as a private. While in basic training at Fort Gordon, Georgia, he was selected to attend Officer Candidate School at Fort Sill, Oklahoma. Upon graduation from Officer Candidate School in 1967 he was commissioned in the Field Artillery and assigned to the 18th Airborne Corps Artillery at Fort Bragg, North Carolina. He subsequently completed Airborne School at Fort Benning, Georgia, and the Jungle Operations Course at the School of the Americas, Fort Sherman, Panama.

From 1968 to 1970 Colonel Mohr served in a variety of combat assignments in the Republic of Vietnam. He was initially assigned to the 1st Cavalry Division (Airmobile), where he served for one year with both infantry and field artillery units. During that time he saw extensive action in Quang Tri province and War Zone "D" and participated in more than 50 combat air assaults. In November 1968 he

was wounded in action during a battle near the Cambodian border. He returned to combat duty and was subsequently assigned to the 101st Airborne Division, where he served as commanding officer of a field artillery unit. His unit conducted combat operations in the Ashau Valley and northern I Corps and was presented the Valorous Unit Award for extraordinary heroism in action.

In 1970 Colonel Mohr returned to Fort Bragg, North Carolina, where he served as commanding officer of a field artillery unit in the 18th Airborne Corps Artillery. His unit received numerous commendations and awards for military proficiency and was the first to air-transport a tactical nuclear weapon. From 1972 to 1973 Colonel Mohr attended the Field Artillery Officer Advanced Course at Fort Sill, Oklahoma, where he graduated on the Commandant's List and was presented the Distinguished Writing Award for his class.

Colonel Mohr was then selected for Army sponsored higher education. He attended the College of Arts and Sciences at the University of North Carolina where he received a baccalaureate degree with highest honors, was elected to Phi Beta Kappa and was awarded the Merck Award for Excellence in Chemistry. At that time he decided to pursue a career in military medicine. He attended the School of Medicine at the University of North Carolina on an Army Health Professions Scholarship and was awarded the M.D. degree in 1979.

Colonel Mohr was then assigned to Walter Reed Army Medical Center, where he completed an internship and residency training in Internal Medicine. He was presented the Erskine Award as the outstanding resident in his class and was selected to remain at Walter Reed as Chief Resident in the Department of Medicine.

In 1983 Colonel Mohr was assigned to the 9th Infantry Division at Fort Lewis, Washington, where he served as Command Surgeon for the Division Support Command. During that time the 9th Division was the Army's High Technology Test Bed and Colonel Mohr had the additional mission of developing and field testing new concepts and equipment for combat medical support. His work was instrumental in modernizing medical care on the battlefield and has since been incorporated into Army doctrine.

Colonel Mohr subsequently returned to Walter Reed, where he served as Attending Physician in the Department of Medicine and Assistant Professor of Medicine at the Uniformed Services University of the Health Sciences. While at Walter Reed he completed one year of fellowship training in Pulmonary Medicine and conducted clinical research on medical problems at high altitude. During that time he also served on the Department of Defense Committee for Military Medical Residency Programs, was an instructor at the Armed Forces Combat Casualty Course, served on the Army Working Group for Deployable Medical Systems and was Scientific Director for the American Andes Biomedical Research Expedition.

In 1987 Colonel Mohr was selected as White House Physician and joined the staff of President Ronald Reagan. He has continued to serve in that position, joining the staff of President George Bush in 1989 and the staff of President Bill Clinton in 1993.

While assigned at the White House, Colonel Mohr helped to plan and coordinate multiple humanitarian assistance projects for underdeveloped and newly independent nations. In 1990 he served as United States Representative at two international conferences on

medical assistance to the emerging democracies of Eastern Europe and the former Soviet Union.

Colonel Mohr is a graduate of the United States Marine Corps Command and Staff College. He is a Diplomate of the American Board of Internal Medicine, a Fellow of the American College of Physicians and a Fellow of the American College of Chest Physicians. He has authored 17 scientific publications and book chapters and currently serves as Associate Clinical Professor of Medicine and Emergency Medicine at both the Uniformed Services University of the Health Sciences and George Washington University.

During his military career, Colonel Mohr has received numerous honors for valor on the battlefield and for distinguished service. His many awards and decorations include the Defense Distinguished Service Medal, the Silver Star, two awards of the Bronze Star with "V" device for heroism in ground combat, two awards of the Bronze Star for meritorious service against an armed hostile force, the Purple Heart, two awards of the Meritorious Service Medal, the Air Medal, two awards of the Army Commendation Medal, the Parachute Badge, the Expert Field Medical Badge and the Presidential Service Badge.

WOLF CONTROL EFFORTS IN ALASKA

Mr. STEVENS. Mr. President, I come to the floor once again to discuss an Alaskan issue and the fact that once more, without solid understanding of an Alaska issue, non-Alaskans have decided they are better qualified than we are to make a decision affecting the resources of our State.

One group has made a lot of noise, caused a ruckus and produced a problem where otherwise one would not have existed.

On the excuse of consideration for animals, some activists have tried to second-guess—without a shred of factual information—the decisions of trained biologists in my State.

The concern of these vocal non-Alaskans is the management of Alaska's world population.

In 99 percent of my State—almost all of its 586,000 square miles—predator and prey populations are able to survive without active management.

But, in one area of Alaska, a 40-by-50 mile area in the foothills of the Alaska Range, roughly just this one very small portion of Alaska—and I brought this map to show the areas that are all outlined, or shaded, are Federal areas that have been reserved for various purposes, for wildlife management in particular.

Over 85 percent of the wildlife refuges in the United States are in Alaska in terms of acreage. The area I am discussing is not part of a wildlife refuge. This is the area of the resident Delta caribou herd, which has declined by an alarming 60 percent over the past few years.

To stem this decline, our Alaska State game biologists determined that a portion of the wolf population, which

preys upon the caribou in that area, required management. The population of the Delta caribou herd dropped from more than 10,000 in 1989 to currently less than 4,000.

That is despite the fact that we stopped all hunting for Delta caribou in 1991. Let me repeat that, we stopped hunting in this area, this small 40-by-50 mile area. Notwithstanding that—there are no longer any takings of these caribou by hunters—the population of the caribou continues to drop.

After an intensive study, the Alaskan Department of Fish and Game planned a wolf control effort in that small area. Incidentally, in that 40-to-50 square mile area are 3 percent of the wolves that live in Alaska. Long research by our Department of Fish and Game has proved that a temporary reduction in wolf population in a specific area can restore depressed wildlife species.

The main factor in the continued decline of the caribou herd is the predation of wolves, and that has been found to be the case by wildlife biologists.

Announcement of the management plan caused an outcry from these uninformed critics who have no knowledge of the facts. They have manipulated the story to suit their purposes. These protesters even took out newspaper advertisements, threatened our tourist industry, really, with blackmail, and they spread false information on the purpose of this game management plan. It has become so bad that Alaska's Attorney General is suing them now for false advertising, which it was. They have completely ignored the truth.

Not once have these people addressed the two most important factors involved in the control decision. The first fact they failed to admit is that wolf numbers of Alaska declined by lack of prey, not because of man's annual harvest or lack of habitat. The Delta caribou herd is critical to the wolves' survival in that area. If the herd numbers are down, the wolf population itself will suffer.

The second fact is that human beings are an integral part of the equation in Alaska. Approximately 60 percent of Alaskans hunt for their food, yet hunters take only 2 to 3 percent of all the caribou. Eighty percent of the caribou killed each year are killed by predators; the rest die naturally.

More wolves are taken by hunters in Minnesota each year than in all of Alaska, even though my State has 3 million lakes and Minnesota is proud to be called the Land of 10,000 Lakes. We have a great deal more area, and we have a great many more wolves. Hunters in Minnesota take more wolves, yet we get criticized for a program of management which is designed to try and preserve the balance of both the caribou and the wolf population.

All indications are that without intervention, this delta caribou herd

will continue to decline and could disappear completely. That would be a great detriment to the herd, obviously, and the wolves and other wildlife, but the people I speak for are the people in the area who rely upon this caribou herd for their food.

It is not just a new problem. As we were looking back through the history of this issue before the Congress, we found that 50 years ago, just minutes before he learned of President Roosevelt's death, Vice President Harry Truman, as the President of the Senate, presented to the Senate a request from the Alaska Territorial Legislature to allow the taking of wolves in Alaska. I have a copy of that petition, Mr. President. It is on page 3283 of the April 12, 1945, edition of the CONGRESSIONAL RECORD. It explained why the Alaska Legislature asked the Senate to act.

The problem was similar to the one we face today. The wolves were decimating then the reindeer herds of the Territory of Alaska. Presenting that petition to the Senate, incidentally, was one of Harry Truman's last official acts as President of the Senate and Vice President of the United States.

What I am here to make my remarks on today is despite what opponents of Alaska's management plan might indicate, our Alaska Board of Fish and Game did not authorize aerial shooting of wolves; did not authorize trapping or land-and-shoot hunting; did not allow year-round hunting or trapping of wolves; did not pay a bounty; they did not authorize radio collars and will not use radio telemetry in dealing with wolves.

The control effort will run between October of this year and April 1994. To maintain the reduced population of caribou herd and assist in its return to its original size, biologists say that between 50 and 75 wolves will have to be taken per year for 2 years.

Just across the border in Canada, Mr. President, they take 10 times that many without an outcry from these extremists. I cannot understand why we cannot have sound wildlife management take place in our State to preserve this caribou herd which is of substantial importance to the people who live in the Delta region.

The Alaska Department of Fish and Game will review this effort again and consider alternatives and options at its next spring meeting. The board of game authorized a control period of up to 3 years, if necessary. Afforded protection both as big game and its fur bearing species, wolves are stable-to-increasing in Alaska. They are not game animals in the sense that they are in other areas of the country. Those who live with wolves and those who depend on the caribou for their very existence during the winter months understand the need to control wolf populations that grow in this manner.

I hope that the Senate and all Americans will hear the truth and understand this. This is a legitimate management issue; it is not one for the ultraextremists trying to, once again, attack a sound management policy in my State.

Thank you, Mr. President.

REMEMBERING THE BATTLE OF PLOESTI

Mr. PRYOR. Mr. President, I rise today to pay tribute to the Army Air Force pilots who fought the Battle of Ploesti in World War II. Yesterday, August 1, 1993, marked the 50th anniversary of this important air battle. On August 1, 1943, while our Nation was engaged in a world war, five men overcame extraordinary obstacles and piloted their bombers with such skill and heroism that they were awarded the Congressional Medal of Honor, our Nation's highest award for military heroism. Of these five men, three were killed during the battle and were awarded the medal posthumously; they made the ultimate sacrifice. This battle resulted in more Medal of Honor recipients than any other air battle during the Second World War.

Now, 50 years later, this battle is largely remembered only by those who fought and survived. However, one young college student in Arkansas wrote me and asked that this battle not be forgotten. Darrell Whitley, of Austin, AR, wrote an eloquent and highly informative research paper regarding this battle for his history class at the University of Central Arkansas. After reading his paper and in particular his final sentence, in which he made an appeal to forever remember the brave men who fought this battle, I felt moved to pay tribute to their bravery and sacrifice.

TRIBUTE TO ABE SACHAR, FIRST PRESIDENT OF BRANDEIS UNIVERSITY

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to pay tribute to Abe Sachar, the first president and chancellor emeritus of Brandeis University, who died at age 94 on July 24.

Abe Sachar was an advocate, scholar, author, educator, and extraordinary American. In 1948, beginning with 107 students, 13 faculty members, and three empty buildings at the site of a former medical college in Waltham, MA, he created a world-renowned university that has made brilliant contributions to scholarship, learning, and tolerance in America. The story of his achievement in leading Brandeis University to such eminence is unparalleled in the modern history of American higher education.

Abram L. Sachar was born in 1899 in New York City to immigrant parents.

His mother had been born in Jerusalem and his father in Lithuania. He served with the U.S. Army in World War I, earned simultaneous B.A. and M.A. degrees at Washington University in St. Louis in 1920, and a Ph.D. in history at Emmanuel College of Cambridge University in England in 1923. That year, he joined the history faculty at the University of Illinois, where he remained for many years. In 1929, he published his famous book, "A History of the Jews."

Abe Sachar was also one of the early leaders of the Hillel Foundation, which sponsored youth centers for Jewish students on college campuses, and provided jobs, housing services, and loans for needy students. He served as national director of the foundation from 1933 to 1948, and he fought to eliminate discrimination and quotas against Jews in American higher education.

In 1948, he was invited to become the first president of Brandeis University, named in memory of the great Supreme Court Justice, Louis D. Brandeis. The office represented an opportunity to fulfill his lifelong ideals, and Abe Sachar made the most of it.

Under his leadership, Brandeis grew from small beginnings to the magnificent institution it is today. During Dr. Sachar's years as president and chancellor, Brandeis achieved a national and international reputation for academic excellence. Its graduates have left a profound mark on our State, our region, our country, and our planet.

Abe Sachar's vision and achievements have been an inspiration to millions of Americans. I join many others in celebrating his extraordinary life, and I extend my deepest sympathy on his death to his wife Thelma and his sons David and Howard. I ask unanimous consent that two articles and an editorial from the Boston Globe on Dr. Sachar's outstanding life and career may be printed in the RECORD.

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

[From the Boston Globe, July 27, 1993]

ABRAM L. SACHAR

Abram L. Sachar, founding president of Brandeis University, was an institution builder of exceptional talent.

In 1948, Sachar created the nation's only nonsectarian university sponsored by the American Jewish community. He was perfectly suited to the task. As national director of the Hillel Foundation, he had confronted the quotas that limited the admissions of Jewish students into prestigious colleges. With his colossal fund-raising abilities, he did something about it.

Brandeis University opened with 107 students and 13 faculty members. Eleanor Roosevelt gave the first commencement address in 1952.

In just two decades under Sachar, Brandeis blossomed into one of the top liberal arts institutions in the country. Today Brandeis has 360 full-time faculty members and more than 3,700 undergraduate and graduate students. Each academic department was built

to make a distinctive contribution to scholarship. That was Sachar's vision, and it worked.

Lawrence Fuchs, a former dean of faculty, spoke of the diminutive Sachar's "outsized abilities"—his intensity of focus, his articulateness and his capacity to see the big picture. These qualities shone through, evidenced by Sachar's ability to raise \$250 million for Brandeis' president and later as chancellor.

Sachar was not well suited to retirement or emeritus status, as subsequent Brandeis presidents would learn. His was an era when leaders were described as "giants." Sachar's organizational ability would rival that of any of today's top university presidents, but this was not his main contribution. His principal legacy is the extraordinary quality of Brandeis University and his singlemindedness in achieving it.

Those saddened by his death Saturday at age 94 extend far beyond the campus.

[From the Boston Globe, July 25, 1993]

ABRAM L. SACHAR, WAS EDUCATOR, WRITER, BRANDEIS PRESIDENT; AT 94

Abram L. Sachar, author, historian and founding president of Brandeis University in Waltham, died yesterday at his home in Newton after a long illness. He was 94.

Mr. Sachar won recognition as the driving force behind molding Brandeis into a major research university and the only non-sectarian college or university sponsored by the American Jewish community. In his 20 years as its president, from 1948 to 1968, Mr. Sachar propelled the university toward national recognition. Begun in 1948 with 107 students and 13 faculty members, Brandeis today has 360 full-time and 114 part-time faculty members and more than 3,700 undergraduate and graduate students.

Mr. Sachar raised more than \$250 million for Brandeis during his tenure as president and later as chancellor.

During his lifetime, Mr. Sachar achieved national and international recognition for his contributions to higher education. The West German government awarded him its Grosse Verdienstkreuz mit Stern decoration in 1969, in recognition of the program that brings foreign students to Brandeis with the obligation of returning to their countries to offer their specialized training.

Mr. Sachar was the recipient of honorary degrees from more than 30 American colleges and universities, including Brandeis; his alma mater, Washington University; Tufts University; Providence College; Hebrew Union College and Harvard University. In 1973, Brandeis dedicated the Abram L. and Thelma Sachar International Center, which houses the Lemberg Program in International Economics and Finance.

Mr. Sachar was born in New York City, to immigrant parents. When he was 7 years old, he moved with his family to St. Louis, Mo.

He received his bachelor's and master's degrees in history from Washington University, St. Louis. He undertook special research in England on the Victorian House of Lords and was awarded his PhD from Emmanuel College, Cambridge University, in 1923.

Upon his return from England in 1923, he joined the history faculty of the University of Illinois, where he remained for 24 years. At the University of Illinois, he became one of the pioneers of the Hillel Foundation, which began there.

Mr. Sachar was chairman of the National Hillel Foundation from 1948 to 1955. He served as its national director from 1933 to

1948, before retiring to accept the presidency of Brandeis University.

He wrote a number of books, including "The Course of Our Times"; "A History of the Jews"; "The Redemption of the Unwanted"; and a chronicle of Brandeis, "A Host at Last."

Mr. Sachar leaves his wife, Thelma (Horowitz) of Newton, whom he married in 1926; and two sons, David B. and Howard M.

[From the Boston Globe, Feb. 15, 1984]

STILL THIRSTING FOR CHALLENGES

(By Martin Pave)

People who have heard his speeches would probably agree that Dr. Abram L. Sachar, founding president of Brandeis University, could recite the telephone book and get a standing ovation.

"I've been listening to him for 35 years and his ability to move me has not diminished," says Atty. Paul Levenson, a Brandeis trustee and student union president in the school's first graduating class in 1952. "He has what very few people have—the capacity to evoke an inspirational emotion. Abe Sachar taught me that it is possible to make dreams come true."

Sachar, who celebrates his 85th birthday today, is a complex personality: charming and sensitive, but obstinate and persistent; controlled, yet wildly visionary; argumentative with those who do not share his view, but even more exasperated by those who have no opinion.

A MAN OF ENERGY

Transcending all are his boundless energy and intensity, optimism and humor, and an unquenchable thirst for challenges.

Energy: He rises at 6 a.m. in his Newtonville home, devours his newspapers, magazines and correspondence as eagerly as his breakfast, and usually arrives at his Brandeis office before his staff. His workday ends late in the evening at home where he says, "I think with my typewriter and write with my ears." Says Thelma Sachar, his wife of 58 years: "Sleep is almost a waste of time to him."

Intensity: His son, Howard, a history professor at George Washington University, recalls the many times his father would drive to the post office and then "he'd walk back to his office, intently reading his letters, or a newspaper, and forget about the car with the motor running."

Optimism: Sachar jokes that his autobiography is not imminent. "I'm too young, I'm going to wait until I mature to get perspective. Maybe I'll do it after my next book."

Which leads to Sachar's latest challenge, one of transition.

Even though he keeps office hours at Brandeis—in the building named for him—Sachar is slowly moving away from administration (he became chancellor emeritus three years ago) and back to an earlier pursuit, writing history.

Sachar will fly to the Orient in May to interview political leaders as part of a new volume of modern history. "When I finish my latest book [The Redemption of the Unwanted] last year, my publisher asked me if I had another one in my belly," says Sachar. "Then I told him of my ambition, to take another view of the world, to document dramatic changes of the last 25 years. I chided my publisher [Richard Marek] and said he was tempting God by giving me a 30-month contract."

But Sachar was always equal to tough tasks.

In the 1930's and 1940's, as a founder and national chairman of 126 Hillel chapters of

American college campuses, he fought to overcome resistance at some schools to the Jewish cultural, social and religious centers.

In 1948, after buying a home in California, he decided to become president of Brandeis, the country's first Jewish-sponsored, but non-sectarian university. The first class of 107 students and 13 professors at a small, defunct medical school in Waltham became a 270-acre campus with an international reputation, 80 buildings, 400 faculty and 3700 students.

"He used to fly in from Dallas or L.A., sometimes after traveling all night, because of his fundraising for the school, to get to his weekly history lectures," recalls Carol Rabinovitz, his former student and now executive director of the Brandeis National Women's Committee. "As a teaching president he made history come alive. As a president, he knew how to use power, but he also wanted to be loved and respected."

DESCRIBED AS MASTER BUILDER

John P. Roche, academic dean of the Fletcher School of Diplomacy in Tufts, said Sachar was a master builder, "one of the two or three greatest architects of an educational institution I've ever known. He is a strange mixture of scholar, dreamer and impresario, a man of many parts."

"After working for Abe Sachar, Lyndon Johnson was a cinch. [Roche was an adviser to President Johnson for two years]. When I was chairman of the Politics Department at Brandeis, he used to say to me 'you find the best person for your department and I'll find the money' Sachar was the original existential administrator."

Sachar, during 20 years as president, another 12 as chancellor, and in three ensuing years, has personally raised more than \$250 million for Brandeis, in large measure through eloquent speeches, delivered from two pages of scrawled notes.

"I have to hold my audience with gesture, context and analogy," says Sachar, and impeccably dressed man whose Brandeis office is lined with books written by faculty members. "After all, I'm a small man with a high-pitched voice, so my appearance isn't going to hold them."

"There's a lot of my grandfather in me. He was the chief rabbi of St. Louis and after World War I he would appeal for aid for Polish Jewish refugees. The congregation, which was not affluent, would nevertheless come to the pulpit and donate coins and jewelry because of the way he moved them."

INFLUENCED BY TEACHER

Sachar's use of descriptive language was a direct influence from his history professor at Washington University, Roland Usher. "When he described Joan of Arc at the Stake," Sachar recalls, "I could smell the smoke." The course led to Sachar's early career as a history professor at the University of Illinois. There was a two-year wait for his classes.

"There was always something fresh, new and exciting about his lecturers, an excitement he never lost," says his wife, who was secretary of the society at Washington University that invited Sachar to lecture at his alma mater in 1924. The were married two years later, he jokes, because "I courted her with 12 books of James Barrie, and I had to marry her to get them back."

Thelma Sachar is her husband's constant companion and editor. When Sachar interviewed historical figures like David Ben-Gurion, Eamon deValera or Earl Warren, her advice and mental notes lent a sense of perspective to his finished product, whether in print or on educational television.

The couple has two other sons, Edward, head of psychiatry at Columbia University Medical School, and David, an associate in gastro-enterology at Mt. Sinai Hospital in New York.

Sachar, the son of immigrant parents, has written five previous books, including "A History of the Jews," which has been translated into several languages and is now in its 26th printing; "The Course of Our Times," a contemporary world history based on his public television lecture series; and, most recently, "The Redemption of the Unwanted," which chronicles the liberation of the Jews from Nazi death camps and the founding of the State of Israel.

TOURED EUROPE IN 1938

He traveled through Europe in 1938 while updating his history of the Jewish people, and, he says today, "I still, recall the faces of eventual victims of genocide." Sachar's voice trails off when he talks of losing 54 family members in the Holocaust, but rises when he sounds a warning:

"You may see a little group that's being persecuted or repressed and say it's not my business and become unconcerned, and then of course, the shadow becomes a cloud and then it becomes a storm. It happens so often in history."

Next month, he will deliver four lectures on the "Redemption" on the West Coast, follow that with a talk in St. Louis on how elderly people can cope with the present and future, attend a three-day symposium in Milwaukee and end the month with a speaking date at Holy Cross College.

"He still has at least 12 things going at once," his secretary of 14 years, Eleanor Charter, says. "We go home exhausted and he thrives on it."

NOMINATION OF THOMAS DODD TO BE AMBASSADOR TO THE REPUBLIC OF URUGUAY

Mr. SARBANES. Madam President, I rise today to express my strong support for the President's nomination of Thomas Dodd to be Ambassador to the Republic of Uruguay.

As a distinguished scholar in Latin American studies, Thomas Dodd brings to this post years of academic and professional experience which will serve him and our country well during his term as Ambassador to Uruguay. Dr. Dodd, the brother of our colleague from Connecticut, Senator CHRISTOPHER DODD, has been a professor of Latin American history at Georgetown University's School of Foreign Service since 1966. At Georgetown, he has served as director of the Latin American Studies Program. In addition to having received numerous awards including grants and fellowships for his widely published writings and research on various aspects of Latin American history and politics, Dr. Dodd has lived and studied in Central and South America and is fluent in Spanish.

As a recognized authority on Latin America, Dr. Dodd has also served as a consultant to and lectured in government, including the Foreign Service Institute, the Inter-American Defense College, the National Defense University, and the Department of State. I

am confident that the breadth of Thomas Dodd's academic and professional background will give our country and the President excellent representation in Uruguay.

Madam President, I commend the President for his choice of Thomas Dodd to be Ambassador to Uruguay and I strongly concur with the Senate's confirmation of this nomination last Friday.

THE ENVIRONMENTAL IMPLICATIONS OF THE NAFTA

Mr. BAUCUS. Madam President, 2 weeks ago, I discussed the environmental conditions on the United States-Mexico border and the need for a strong side agreement on the environment if the NAFTA is to benefit our country. Today I will respond to two arguments that call for voting for NAFTA regardless of the side agreement. These are:

First, the contention that by spurring economic growth in Mexico, the NAFTA will automatically promote environmental protection; and

Second, the argument that the NAFTA is already the "greenest trade agreement in history" and doesn't need a strong side agreement.

DOES GROWTH BRING ENVIRONMENTAL PROTECTION ANYWAY?

Proponents of the first argument frequently cite a Dartmouth study arguing that when a country reaches a level of about \$5,000 per capita, its environmental protection rapidly and dramatically improves. Up to that point, industrialization creates terrible environmental problems. Afterwards, it gets cleaned up.

This may well occur in some cases. However, it is not GDP per capital itself that spurs environmental protection. Poor people don't like drinking industrial chemicals any more than rich people. But poor farmers and unskilled workers are politically weak, and have difficulty making their Government protect them.

Richer countries are more likely than poorer countries to be democracies with a strong middle class. Middle-class people and citizens of democracies have more political influence that poor farmers, manual laborers, and citizens of dictatorships. They are strong enough to demand environmental protection. That's why environmental standards often rise as countries develop.

If we did not have a long common border with our NAFTA partner—if this were a free trade agreement with, say, Bolivia—the issue would not affect us directly. One could say, well, who cares if Bolivia gets polluted? Let's conduct an experiment. Let's see if the problem solves itself as the country develops. No skin off our noses.

But we do have that border. We cannot ignore the problem. Pollution in

Mexico is pollution in America, and it directly affects the health and safety of American citizens. We cannot afford to wait. We need environmental enforcement now.

THE MAQUILADORA EXPERIENCE

With a strong environmental side agreement, we can get environmental enforcement. Conversely, passing the NAFTA without a strong side agreement could well cause a disaster.

To understand why, look at our existing free trade with Mexico—the maquiladora program on the border. It lets Mexico import raw materials and components of industrial goods from the United States duty-free, assemble them into final form, and reexport them to the United States duty-free. We created it in 1965. As I recall, nobody thought about the environment at all.

The result? Eight out of ten United States-owned maquilas operate in violation of Mexican environmental law. Governor Richards of Texas estimates it will cost \$4.2 billion to clean up her section of the border alone. Estimates for the full border area go as high as \$30 billion. Infectious hepatitis in El Paso runs at five times our national rate. In Juarez alone, 55 million gallons of industrial sludge and 24 million gallons of raw sewage flow into the Rio Grande every day. All largely because of the operation of maquiladoras on the border.

These plants cut costs by dumping waste and garbage into the Rio Grande, and they make us pay the bill. They give themselves a pollution subsidy at the expense of law-abiding firms.

Disease spreads in America as well as Mexico. We spend more tax money on environmental cleanup. There is no end in sight.

This was not inevitable. If we had thought ahead, and coupled the maquiladora program with an enforceable guarantee against environmental abuses, we could have avoided it.

We must not repeat our mistake. We must learn from it instead. By pushing for a side agreement with trade sanctions as enforcement, we show that we have learned something.

IS NAFTA THE GREENEST TRADE AGREEMENT IN HISTORY?

A second argument is that the NAFTA is already the greenest trade agreement in history and will mean significant environmental improvement. Thus, one would be silly to oppose it if the environmental side agreement does not measure up. To do so would make a perfect agreement the enemy of a good agreement, and damage both trade and the environment.

If this were correct, it would be an unanswerable argument for the NAFTA. It deserves a serious response.

In a rhetorical sense, NAFTA may well be the greenest trade agreement ever. But in reality it is business as usual. Let me review the NAFTA's environmental provisions:

First, its preamble says sustainable development is a goal. That is all well and good. But it does nothing on the ground.

Second, it contains a provision saying that if Mexico is using weak environmental enforcement to attract investment, we can request consultation on the issue. Well, we can request consultation now, if we have a quarter to make the phone call. That does not mean we will achieve anything.

Third, it explicitly protects some of our existing rights. These are the Federal Government's ability to inspect meat and vegetables at the border, and the right of States to pass environmental laws stronger than Federal standards.

This provision simply protects existing laws. In no way does it improve the status quo. It does not even protect all our laws. Mexico has not given up the right to attack our process standards—as it did a few years ago in successfully using the GATT to attack our effort to protect dolphins.

To sum up: NAFTA has nice rhetoric. In some areas it protects the status quo. In no area does it improve the status quo. And it offers no protection against the kind of gush of pollution the maquiladora program caused. It is not good enough.

WHY WE NEED STRONG SIDE AGREEMENTS

When a plant gives itself a pollution subsidy and harms law-abiding firms, and Government will not enforce the law, the plant should lose the benefits of the NAFTA. Our side agreement proposal will make sure it does.

We are not asking Mexico to write new laws. We are not even asking for the perfect environmental NAFTA. For example, we have not asked to change the text to protect our process standards. We simply ask Mexico to enforce its existing law. That's all.

We failed to do that when we created the maquiladora system. We made a giant mistake. I will not stand by as we repeat it. If we get a strong environmental side agreement, I will support the NAFTA. If we cannot, I will not. It's that simple.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

The Chair recognizes the Senator from Minnesota.

EXECUTIVE SESSION

Mr. WELLSTONE. Madam President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to executive session to consider the nomination of Thomas Payzant under the time agreement. This request has been cleared with the minority.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. WELLSTONE. I thank the Chair. The ACTING PRESIDENT pro tempore. The nomination will be stated.

DEPARTMENT OF EDUCATION

The assistant legislative clerk read the nomination of Thomas W. Payzant, of California, to be Assistant Secretary for Elementary and Secondary Education.

Mr. WELLSTONE. Madam President, I yield 15 minutes to the Senator from South Carolina to speak as if in morning business.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Senator from Minnesota. I do appreciate it, and I will try not to even take that amount of time.

THE BUDGET

Mr. HOLLINGS. Madam President, somehow, we have to expose the Washington speak with respect to this budget plan, especially the disingenuous excuse "I cannot vote for it now because it does not do the job." Heavens above, we have known for months that this plan does not eliminate the deficits, that it is only the first step.

Specifically, while this plan does not do the job, neither did Dole-Domenici, neither did Nunn-Domenici in 1992. None of them do the job because no single plan can solve entirely the fiscal disaster given the President of the United States here in January.

President Clinton has been down in Arkansas for 10 years balancing budgets. I think he knows what does the job. I wanted to make sure of that myself in February, and I had the advantage of speaking at length with the President with respect to a plan to do the job, stating at that particular time:

Madam President, as you know, you are going to have deficits in excess of \$250 billion per year for the 5 years. You are going to add at least \$1.2 trillion to \$1.4 trillion to the national debt even with your plan.

And the President was concerned at the particular time—I will never forget it, because he had had a meeting with the Prime Minister of Britain, John Major. Major had told him that Europe, the European Community was a basket case, that they were not going to have economic growth this year. He noted also that the Pacific rim is in trouble economically, and that the United States of America must lead the way as the locomotive of world economic growth.

So, in addition to the inherited deficit and debt, on the one hand, our President in taking over the reins of Government and has the task of keeping the engine of Government moving

and at the same time trying to provide leadership to the economic recovery of the global economy itself. He has had a most difficult task.

I have been in this game now for the past 12 years. We knew it would be a disaster when President Reagan drastically cut revenues in 1981, which David Stockman now says was the original cause of the budget mess in Washington. The Republicans covered their tracks by calling for growth, growth, growth. Now they have changed their litany; now it is cut spending first, cut spending first, cut spending first.

Madam President, this particular plan does, indeed, cut spending. It does not cut the deficit. It cuts spending.

When you look at the deficit right now in excess of \$300-some billion—they change the figure with the reestimates of around \$321 billion—and you look at the deficit next year, it has not been cut. You look at the following year, it has not been cut. You look at it over the 5 years, the deficit itself has not been cut.

We still have an enormous deficit and, in my judgment, it is going to exceed \$300 billion the fifth year out.

So if you have over a \$300 billion deficit this minute here in August 1993, and you look where you are 5 years out in 1998, you still have over \$300 billion, then you are in trouble. That is agreed. That is understood.

So the distinguished Senator from Oklahoma, in headlines this morning when I got back in town, had changed his vote from last month in support of the President's plan and now does not support it because he says it does not do the job. Come on. Nothing has changed. That is nonsense. No one makes any claim that this puts us in the black or actually reduces the debt. So when you look at the fifth year out at the deficit, the deficit is still around \$300 billion.

What this plan does is to reduce spending \$500 billion over the 5-year period. That ought to be understood from the word go. I fault the media for not explaining it properly. I fault us here in Washington for not explaining it to the American people.

As Lewis Carroll wrote in "Through the Looking Glass," to stay where you are you have to run as fast as you can. To get ahead, you have to run even faster.

This Republican crowd ought to be ashamed of themselves. They are the ones who put this deficit and debt on automatic pilot. Taxes? Cut spending first? They put taxes first, deficit taxes.

This morning, Monday, at 8 o'clock, the very first thing we did is go down and borrow another billion and add it to the debt. So the debt goes up, up, and away; the deficit goes up, up, and away to pay for what I call interest taxes.

Now, no one is saying—not in the Dole-Domenici plan, not in the Nunn-Domenici plan, not in the Perot plan, not in the Kasich plan—none of them claim to eliminate the interest costs of \$300-some billion so that we can stop the growth of the deficit and the debt. It is going up \$1 billion a day. And that is the dilemma the President finds himself in, and the lack of public understanding, Ross Perot included.

They all want the litany of cut spending first, do not raise taxes. But we do not have the luxury of choice. We need all of the above.

We tried the freeze. We tried the cuts in spending. We tried taxes. Now, none of them alone is enough. You have to do even more.

And with respect to a freeze and cuts in spending, President Clinton has done so in accord with no-nonsense CBO figures. I voted against that 1990 budget summit fraud and stood on this floor right here at this desk and pointed out the bogus projections of growth, bogus projections of interest rates, and so on. CBO told us the real numbers. So I said: This is a fraud and you know it; quit misleading the American people.

Instead of cutting the deficit \$500 billion, as they claimed in 1990, we have a 1-year deficit this year of almost \$400 billion. Yet, a majority of the Republicans voted for the 1990 plan, but you cannot get a single vote for the Clinton plan today. The majority of the Republicans—DOMENICI, DOLE, that whole crowd—voted in 1990 for the so-called cut in the deficit of \$500 billion, yet we have a deficit growing this year alone at almost \$400 billion. They supported the Bush plan then, but now there is not a single Republican vote for the Clinton plan.

Instead, we are bogged down in pollster politics, with the rhetoric on every TV show: Cut spending first, cut spending first, cut spending first.

Right this minute, we have a discretionary outlay figure of \$548 billion for 1993. That includes domestic discretionary, defense spending, and international spending. That is the outlay figure for the 1993 fiscal year budget.

That is George Bush's spending. Incidentally, he never vetoed a red cent of spending. Forty-three vetoes, and he never vetoed spending.

So they are the manufacturers of their own fate on the other side of the aisle. They act as if they had nothing to do with it; that President Clinton invented the deficit. But discretionary outlays are \$548 billion this year, and that is George Bush's budget.

Yet, President Clinton, in this 1994 reconciliation budget deficit for the same three areas—domestic, defense, and international—is \$538 billion. That is an absolute cut of \$10 billion compared to fiscal year 1993.

So what did we do? The President of the United States came forward and

said, "Look, I am cutting my own staff 25 percent." This Senator cut the Commerce, Science, and Transportation Committee 10 percent. We eliminated 100,000 jobs in the Federal Government. We have come around and frozen your pay, my pay, and everybody else's pay. And they are fussing about that still.

In the Budget Committee, my same Republican colleagues, when we were in the markup, they said we could not freeze pay 1 year, particularly for the military. And then they proposed a 5-year freeze when they got out on the floor. There has been total hypocrisy.

They said in the Budget Committee we could not have Social Security taxes on the recipients above the \$40,000 income level at 85 percent, which would still be less than the average pensioner pays on his benefits. Then they came on the floor and said: We want to cut, for the senior citizens, Medicare and Medicaid \$177 billion. It is devastating. You could not find a doctor for a senior citizen.

So they went through those things, but they never came out with a plan of specific cuts. All they offered were broad percentage cuts, with nothing specific.

That Republican cut of \$177 billion in Medicare and Medicaid would have put it where no senior citizen would have access to a doctor.

Madam President, let us not allow the perfect to be the enemy of the good. This is the first President who has come to town and categorically analyzed the problem and said we need it all—spending cuts and tax increases. He did not give us this "read my lips" baloney. He said we are going to have some cuts, we are going to have some freezes, and we are going to have some taxes.

And he originally proposed a broad-based consumption tax, a Btu tax. He tried his best to hold it. He held it in the House, but could not hold it here. But that is the reality.

But it was not President Clinton who could not hold that broad-based consumption tax. He told me back in February he did not think he had enough strength in the land for such a tax. Americans have been in a spoiled condition of demanding instant Government, of not paying for services, of opposing taxes as the great enemy. Republicans pander to those sentiments.

They proposed a broad-based consumption tax; namely, when the Center for Strategic and International Studies came forward with the Nunn-Domenici plan, which called for a broad-based consumption tax. But now, all of a sudden, they say the President has not cut spending first. They are playing parliamentary and political games out here on the floor of this Congress.

We have a good first step in the President's budget plan. And in this first step, we all should be supporting it and not coming forth claiming, oh,

we discovered now it does not do the whole job. No one contemplated it would do the whole job, because the job is too enormous, quite frankly, for any President to do here in 2 years, 3 years, or 4 years.

I would try to do even more. And I have tried to impress upon the President that we are going to have to have a large 5 percent across-the-board value-added tax to bring in more than \$100 billion, allocating it to the deficit and the debt. Even that will not do the job in 1 year. It will take several years to do it.

I see my leader, the Senator from Minnesota, is ready to move on to the Executive Calendar and his appointments.

I appreciate him yielding at this particular time, to say that we must not be under any illusions about doing the whole job. And I said at the time I voted that it would not do the whole job. We all know that; anybody with any sense knows it.

But you have to start somewhere. President Clinton has given the leadership. He has had the political courage to get out here and call it as it is, and try to use every angle at his disposal to get a budget plan passed.

Republicans ought to be ashamed of themselves, voting in a majority just 2 years ago for the present dilemma that they have caused, and coming back around now and saying that the Clinton plan will not do the job and, therefore, you get none of our votes on it.

I yield the floor and I thank the distinguished Senator from Minnesota.

Mr. WELLSTONE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Madam President.

I thank the Senator from South Carolina for his remarks.

As I understand what the Senator from South Carolina was trying to say, I remember reading a book by, I think, several journalists from the Philadelphia Inquirer—I think they won a Pulitzer for it—entitled "America: What Went Wrong."

Their point was that it was a good many years, a decade plus, of sweeping problems under the rug, including the debt, the budget deficit and the debt.

So when you are dealing with that kind of legacy, I think what the Senator from South Carolina is saying is not doing the job means that in one stroke of public policy you do not fully address that problem, but you begin to change the course, you begin to change the direction. And that is the way the Senator from South Carolina has interpreted the President's plan.

Mr. HOLLINGS. That is exactly right. The President has come in here with not only all those cuts—we cut back the veterans' programs, we cut back the farm program, we had to cut

back legal services—we cut them and people do not seem to understand. The FCC—it was \$7.2 billion, we have raised all kinds of fees. We are struggling around here trying to find new sources and the President is not given the credit because he is not solving the whole problem, or doing the whole job.

Who are they kidding, anyway?

The PRESIDING OFFICER (Mr. DORGAN). The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I will add, before I go forward with a floor statement, I think there is another problem in the equation. We should treat people in the country with intelligence because I think there is a great deal of intelligence out there in this budget debate. The other problem is that we have a very fragile economy still, with a high level of unemployment officially defined, much less subemployment, including people who work full time for poverty wages or people who are only part-time employed, much less people who do not have jobs they can count on, jobs with decent wages and decent fringe benefits.

So there comes a point when you cut even further and further, you run the risk of plunging this country right back into a recession. I do not think there has been near enough said in this debate about the whole question of investment in this economy and that whole issue.

EXECUTIVE SESSION

NOMINATION OF THOMAS W. PAYZANT, OF CALIFORNIA, TO BE ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION

The Senate continued with the consideration of the nomination.

Mr. WELLSTONE. Mr. President, I am pleased to speak on behalf of Tom Payzant as Assistant Secretary for Elementary and Secondary Education. If confirmed, he will be one of the most qualified individuals ever to serve in this position. He brings over 30 years of success as a teacher, principal, and superintendent. He has served as a superintendent in four States, Pennsylvania, Oklahoma, Oregon, and California, each time finishing with a distinguished record of accomplishment.

Under his leadership, San Diego gained a reputation as one of the best managed and most successful urban school districts in the country. The reasons are clear: increased academic achievement as measured by overall test scores, the number of students taking advanced placement courses, and the number of students going to college; a 50-percent reduction in drop-outs, a 30-percent reduction in central administration during a time of in-

creasing enrollment; maintenance of strong relationships with teacher unions while making a cut of \$50 million in the budget; institution of comprehensive services for children; and, finally, a successful voluntary desegregation effort. This record was acknowledged this year when Dr. Payzant was awarded the prestigious McGraw Award for Excellence in Education.

It is not surprising, therefore, that Dr. Payzant has won support from all ends of the political spectrum. At the Labor Committee hearing, Dr. Payzant was introduced by two California Congressmen: a Democrat, BOB FILNER, and a Republican, DUKE CUNNINGHAM. Congressman CUNNINGHAM expressed the sentiments of many when he told us:

Mr. Chairman, there is only one other time I have supported a Democrat in a position like this, and that was when my dad was elected Mayor * * * if you take California politics and put someone in there for ten years—and I am considered a very conservative Republican—and you can win 99 percent of the support across-the-board, that record stands for itself, and I am very proud to stand up for Dr. Payzant.

Dr. Payzant has also won the support of the community. The list of letters of support we have received fills almost five pages. Let me cite a few of those letters:

National PTA: "Dr. Payzant possesses a professional balance that is unique for a national education leader. He, first and foremost, cares about children. Children have been the driving force of his career and the nucleus of his public service."

San Diego Unified PTA Council: "Dr. Payzant's vision of schools where * * * administrators, staff, and parents work collaboratively to create an optimum and living and learning environment for the particular students at that school is a vision which our PTA Council shares."

Donald Stewart, President, College Board: "Tom has demonstrated his outstanding leadership skills and his comprehensive knowledge of education issues."

Oklahoma State Senator John Rogers: "I believe education leaders should be exemplary in their conduct and in every instance I found Dr. Payzant to be of the highest moral character and possessed of the best qualities of leadership."

I could go on and on, but I think it will be very clear to my colleagues that we have a nominee who is not just an outstanding educator, but also a person of integrity and decency that we would all want for a national education leader.

Dr. Payzant, like virtually every superintendent in the country, has critics who do not share his views of children's needs and the best way for a superintendent to address them. He answered those critics openly, honestly, and fully on July 1 at a Labor Committee hearing, and he received bipartisan support of the committee with a vote of 13 to 4 on July 14.

The time for further debate is passed. This body does not have time to endlessly debate peripheral issues. It is

time to confirm Dr. Payzant and let him get to work on helping to solve the deep educational problems of this country.

Mr. President, that is an opening statement. I do not yet see other colleagues on the floor, so I suggest the absence of a quorum and ask unanimous consent that the time of the quorum call be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. KASSEBAUM. Mr. President, I rise in support of the nomination of Dr. Thomas Payzant, to be Assistant Secretary for Elementary and Secondary Education. By all accounts, Dr. Payzant is a fine educator with more than 30 years of experience, first, as a classroom teacher, and then for the past two decades as superintendent of school systems in Pennsylvania, Oregon, Oklahoma, and San Diego, CA, where he has served for over 10 years.

Evidence of Dr. Payzant's qualifications and credentials for this position are underscored by his long tenure as chief of an urban school district like San Diego, a rare accomplishment these days when the average tenure of an inner-city school superintendent averages about 3 years. As a former member of a school board, I have fully recognized what a risky position a school superintendent has today.

Dr. Payzant's decade of service as chief of San Diego Unified School District is a further measure of his ability to satisfy the competing needs and demands of the system's 10,000 teachers and employees, its 125,000 students, their parents, and the increasingly diverse community it serves. That is not an easy position to hold these days, and I think his ability to do so indicates a skill in bringing consensus and thoughtfulness to educational matters.

The primary controversy surrounding this nomination has been his support for the school board's decision to discontinue a special program sponsored by the Boy Scouts which was conducted in a handful of San Diego schools during regular school hours. The school board discontinued this special program on the grounds that the Boy Scouts as a national organization violated the school board's recently adopted nondiscrimination policy regarding sexual orientation. Dr. Payzant supported the school board's nondiscrimination policy against sexual orientation and the school board's decision to discontinue the special program sponsored by the Boy Scouts to the extent it operated during regular school hours.

Contrary to many press reports, the school board's decision did not affect the traditional Boy Scout after-school programs that continue to operate throughout the San Diego school district on and in school property.

Although opponents have attempted to assert that Dr. Payzant recommended the removal of the Boy Scouts from the school district altogether, I could find no truth to those charges. I believe Dr. Payzant's statements that he supports continued access to school facilities for the Boy Scouts' traditional after-school programs. It should be noted for the record that the Boy Scouts would not have been allowed to operate their special nontraditional programs during regular school hours had Dr. Payzant not given them specific authorization. It should also be noted that he is both a former Boy Scout, a former member of the local Boy Scout board, and a parent of former Scouts.

This being said, Mr. President, I wish to emphasize that I strongly disagree with the San Diego School Board's decision even though it applied only to a special Boy Scout program that operated during the regular school hours. Although I question whether any outside group should be allowed to operate programs during regular school hours, because I have tended to believe activities outside the curriculum of the school should be held after school hours, I firmly believe that if any outside group is allowed to operate during regular school hours, the Boy Scouts should be given the same privilege. Moreover, had Dr. Payzant in fact recommended that the Boy Scouts be denied special access to conduct their traditional after-school programs, I would have voted against his nomination. Dr. Payzant, however, simply did not make such a recommendation.

While I do not agree with Dr. Payzant regarding the school board's antidiscrimination policy as it was applied to the special nontraditional Boy Scout program that operated during regular school hours, I believe that this specific issue should be examined in the context of his entire professional record. Dr. Payzant has demonstrated the qualities of leadership and the commitment to improve public education that are essential in his position as Assistant Secretary.

I think it is interesting, Mr. President, to note that this morning there are a number of Boy Scouts in attendance, and I think it is a special honor for us today to have so many visiting Capitol Hill as they are holding their national meeting here in the area over the past weekend.

Putting the school board's decision in its proper context, I find it is indicative of a disturbing trend throughout our country where schools and school boards are becoming increasingly embroiled in issues that detract from the

primary mission of teachers and administrators, which is providing the best possible education for every single child in the United States.

The time and energy and value of discussions that go way beyond what I believe need to be the focus of our educational agenda are very troubling to me.

Accomplishments of that task will require someone with substantial experience and a tireless commitment to improving the quality of public education in America. Dr. Payzant certainly has substantial experience, and I believe he has a tireless commitment. I will vote for this nomination. Congress will soon be reauthorizing the Elementary and Secondary Education Act. This legislation presents a real opportunity to better focus our Nation's educational goals. I look forward to working with Dr. Payzant in this endeavor.

I ask unanimous consent, Mr. President, to have printed in the RECORD my questions to Dr. Payzant and his responses, as well as other material relating to this nomination.

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

QUESTIONS FOR THE RECORD BY SENATOR KASSEBAUM FOR TOM PAYZANT, NOMINEE FOR ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION

1. Are the Boy Scouts currently prohibited from San Diego schools facilities for meetings and other events after school?

No. Boy Scouts are not prohibited from using San Diego City Schools' facilities for meetings and other Scout events.

2. Could you explain the events and circumstances that resulted in the school board's decision to terminate the Boy Scout program that was conducted during regular school hours?

The San Diego City Schools Board of Education adopted a non-discrimination policy in December 1992 which included sexual orientation. The policy was at odds with the policy of the Boy Scouts who sponsored several programs during the school day when students are in compulsory attendance. The Scouts also sponsor after school programs in school facilities. I recommended that the School district continue the widespread use of school facilities for Scouting programs after normal school hours, but disallow such programs during the regular day when students are in compulsory attendance. The Board unanimously agreed.

3. Did you ever recommend to the school board that the Boy Scouts not be able to use the facilities after school?

No. I never recommended that the School Board prohibit Boy Scout use of school facilities after school hours.

4. Why were the Boy Scouts affected by the non-discrimination policy and not the Girl Scouts or Camp Fire Girls?

The Girls Scouts and Camp Fire were not affected by the School District's non-discrimination policy because they do not discriminate based on sexual orientation.

5. In March of 1992 you formed a Committee on Gay, Lesbian and Bisexual Issues in Education. The Committee produced a report in June of 1992 with a variety of recommendations. Other than the proposal to add sexual orientation to the school districts

anti-discrimination policy did the district adopt any of the other recommendations?

Do you support or endorse all the recommendations in the Committee's report?

The School District implemented the recommendation to add sexual orientation to its non-discrimination policy. The district also is committed to efforts that will result in the elimination of slurs and name calling consistent with the committee's recommendation. The committee recommendations on staff development will be implemented during the 1993-94 school year. The school district has not adopted the committee's other recommendations.

No. I do not support or endorse all recommendations in the Committee's report.

6. It has been reported in the various newsletters in opposition to your nomination that you sponsored and successfully advocated special rights for "homosexual kids within the public school system." Is this accurate?

No. I did not advocate special rights, for, "homosexual kids within the public school system". I believe that every student is special and that his or her needs should be met regardless of gender, race, religion sexual orientation, disability or any other unique characteristic.

7. It has been represented that you sought to bring a workshop entitled Project 10 to the San Diego school district. Could you explain what is Project 10 and what if any role you played in bring it to the San Diego school district?

Project 10 is a counseling program which responds to the needs of and provides support for gay and lesbian youth. It operates in the Los Angeles Unified School District. The Program is not in San Diego City Schools. In September, 1990 the School District In-service Coordinator invited the director of Project 10 to speak at a San Diego workshop for teachers and counselors to discuss the needs of gay and lesbian students. Although I was not directly involved in inviting a representative from Project 10 to participate in the San Diego workshop, I do strongly support staff development programs which will enable educators to better meet the needs of all young people in the schools.

8. It has been reported that you instituted a program that eliminated the F grade from San Diego schools and adopted a policy of automatically promoting elementary students. Could you explain the district grading and promotion policies?

The San Diego Dropout Prevention Roundtable, a group of educators, parents and community people, recommended that the "F" grade in secondary schools be replaced by "no credit". A student not meeting standards to receive a passing grade in a course would be allowed to retake the course under this proposal but would not receive credit and a passing grade until course standards were met. I endorsed the proposal. The Board of Education adopted a modified policy which retains the "F" grade, but allows a student to retake the course and replace the "F" with the new grade. The school district does not have an automatic promotion policy. Students in San Diego are retained when they do not meet promotion standards.

9. You have received national attention and respect for reducing the bureaucracy of the San Diego school district and making individual schools more responsible for their own decision. Could you explain these reforms?

For several years San Diego has been engaged in restructuring to improve teaching and learning for all students. The central office was downsized by about one third during

by tenure while student enrollment grew from 108,000 to 125,000. Each school has a governance team of school staff and parents who work together to make significant decisions about the school's programs and operations. A core academic curriculum has been established. New forms of assessment are being developed and field tested. Over 400 partnerships between schools, businesses and community organizations have been established. School district relationships with employee unions have become more collaborative and nonadversarial. Dropout rates have fallen significantly and student achievement has improved.

10. What will be your most important goal and priority as Assistant Secretary for Elementary and Secondary Education?

My most important short term goal is to work with the Secretary of Education and the Congress on the reauthorization of the Elementary and Secondary Education Act. A continuing goal is to use my 30 years experience as an educator with school districts in seven regions of America to help shape policy that will result in improvement of teaching and learning for all children.

11. What do you believe is the most critical challenge facing public education today?

There are many challenging issues facing public education. I believe we must convince all Americans, not just those with school-age children, that their support of public education is essential and in the interest of everyone. I believe we must form new partnerships between parents and educators as well as the home and the school, while we work together to help all students reach high standards of excellence. I believe we must create safe, positive learning environments in our schools which will enable teachers to engage students in productive learning.

SAN DIEGO UNIFIED SCHOOL DISTRICT,
San Diego, CA, July 29, 1993.

Hon. EDWARD KENNEDY,
Hon. NANCY KASSEBAUM,
U.S. Senate, Washington, DC.

DEAR SENATORS KENNEDY AND KASSEBAUM: Please accept this letter in response to inquiries relating to San Diego Unified School District requirements for the processing and approval of district contracts. Pursuant to District procedure number 1570, all contracts must be approved by the district's governing body, the Board of Education, unless the power to contract has been delegated by the Board to a district officer.

A person who originally desires approval of a particular contract must have the proposed contract approved by his/her division administrator. For example, a school principal desiring to enter into a contract with a vendor would first be required to obtain the approval of the assistant superintendent to whom that school is assigned. Following such approval by the assistant superintendent, the proposed contract must then be approved by the district's legal office as to form and legality. The contract must next be approved by the district controller to assure that funds are available for expenditure under the agreement. Once the foregoing approvals have been obtained the proposed contract is submitted to the Board of Education for its approval. The Superintendent has no involvement in the approval of contracts. After Board approval the contract is executed on behalf of the district, typically by the district's deputy superintendent in the case of school-related contracts.

All contracts with Social Advocates for Youth (SAY) were generated and processed in the above noted manner. There were six

contracts between the district and SAY in recent years. The approval of a contract by the district's superintendent is neither required, nor contemplated, by district procedures. As indicated above, discretionary approvals are required only from the division assistant superintendent and the Board of Education.

With respect to the grievance filed by counselors at O'Farrell regarding the use of the family advocates hired by SAY, that grievance has been settled. The counselors contended the advocate positions should have been staffed with school counselors rather than outside staff hired by SAY. In the settlement of that grievance the parties agreed that the family advocate positions were not the same as school counselor positions. The positions remain staffed with the advocates recruited by SAY.

Please feel free to contact our office if we may be of additional assistance.

Sincerely,

Christina L. Dyer,
General Counsel.
Mélanie Petersen,
Deputy General Counsel.

JULY 29, 1993.

Hon. EDWARD KENNEDY,
Hon. NANCY KASSEBAUM,
U.S. Senate, Washington, DC.

DEAR SENATORS KENNEDY AND KASSEBAUM: This statement is submitted for the purpose of explaining the history to the agreement between the District and SAY, San Diego for the provision of family advocate services.

O'Farrell Community School was reopened in 1990 under my leadership as Chief Educational Officer with the support of a community planning committee. The director of the San Diego County Department of Social Services, Community Action Partnership (CAP), Mrs. Georgia Tate, was an active member of the planning committee and was very interested in the success of our school.

In 1990, the San Diego Unified School District's Board of Education and the San Diego County Board of Supervisors approved a partnership between O'Farrell Community School and the San Diego County Department of Social Services to co-fund family advocate positions at O'Farrell school. In an effort to improve the coordination of the educational and social service communities, O'Farrell staff, with the assistance of CAP, wrote a Request For Proposals for the provision of family advocate services in conjunction with the similar services to be provided by the San Diego County Department of Social Services. The Request for Proposals was distributed to numerous community organizations in the county.

All written responses to the Request for Proposals were reviewed by a team of O'Farrell staff and staff from the San Diego County Department of Social Services, CAP. SAY was selected for award of a contract by the team which reviewed the responses to the Request for Proposals. The team's decision was based solely on the merits of SAY's proposal. The contract with SAY has been renewed annually since that time.

Dr. Thomas Payzant was not involved in the decision to contract with SAY. The only District personnel involved in the selection of SAY for award of a contract were teachers at O'Farrell and me. Dr. Payzant's wife, Ellen, who I believe at the time was associated with SAY, was also not involved with the decision to award a contract to SAY.

Should you need any further information regarding this matter, please feel free to

contact me at (619) 789-7769 (home) or (619) 263-3009 (work).

Dr. BOB STEIN,
Chief Educational Officer,
O'Farrell Community School.

Mrs. KASSEBAUM. Mr. President, I look forward to his confirmation. I look forward to our working together as a Congress with the administration in a renewal of dedication to quality education. It cannot just come from Washington. It must come from all of us working together, and if there cannot be the support from the community and parents to reach that endeavor, no amount of legislation we can pass will accomplish the purpose. But certainly having those such as Dr. Payzant step forward as Assistant Secretary for Elementary and Secondary Education will be a major step in assisting us in being a participant in those efforts toward quality education.

I yield the floor and suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. KASSEBAUM. Mr. President, I further ask that the call of this quorum be equally divided in time.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

Mrs. KASSEBAUM. Now I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, is leader time reserved?

The PRESIDING OFFICER. That is correct.

THE PRESIDENT'S ECONOMIC PLAN

Mr. DOLE. Mr. President, I understand that later today the distinguished majority leader and the chairman of the Senate Finance Committee, Senator MOYNIHAN, and other key Democrat negotiators, who have been working for the past week behind closed doors, are expected to announce the final details of the Clinton economic plan.

As far as Republicans are concerned, nothing we have heard so far changes the fact that we think this is a bad plan that will be bad news for the economy and will not solve the deficit problem.

The glue that holds the Republican Party together is the absolute conviction that the United States cannot spend its way into prosperity and cannot tax its way into prosperity.

No last minute cosmetic changes can hide the fact that the centerpiece for the Clinton economic plan is the largest tax increase in history. This is a "tax-now, cut spending later" plan that will slow down the economy and destroy thousands and thousands of jobs.

We learned yesterday, I must say with great surprise and some shock, I think, that the income tax hikes in this bill will go into effect January 1 of 1993—not next year, but they have already been going on in January, February, March, April, May, June, July and now August. A lot of people are going to find out when this passes that they have been paying taxes all year at a higher rate and did not know it.

Those affected by these new taxes, who file as individuals, have 4 months left to pay for an almost 30-percent increase in their tax bill—a 30-percent increase. For a lot of small business men and women, this increase will have the same effect as a 67 percent tax hike for the remainder of this year.

Keep in mind there are 21 million small businesses and a lot of self employed people who will not pay any increase in tax. Of those 21 million subchapter S corporations and partnerships and sole proprietors, 4 percent create 70 percent of the jobs. Of all of the corporate returns filed, I think 7 percent are subchapter S corporations, and they do not pay corporate rates, the 35 percent. They are going to pay the 45 percent, because it is retroactive to January 1; it is going to be a 67-percent tax hike for the remainder of this year.

On the spending side, the vast majority—I do not think anybody quarrels with this number—80 percent of the promised spending cuts in the plan are delayed until after the 1996 elections. In fact, yesterday, Chairman MOYNIHAN repeated that this plan really does not cut anything; it simply slows the rate of projected spending increases. That has happened in all administrations, but I think most Americans think if you are going to cut, you really cut. We are slowing the increases in Medicare as it affects providers, hospitals and doctors and others, who in the past have been able to shift their costs, but now they cannot do that. It is going to be very difficult and tough on a lot of small hospitals in rural areas.

So I do not believe that is a good deal for America.

Not one Republican voted for the President's budget plan in either the House or the Senate. I cannot speak for my colleagues in the House, but based on what we know about the conference report, it is worse than it was when it left the Senate. I do not see how a sin-

gle Republican in the Senate can change his or her mind and vote for this package. In fact, it is even worse than the Senate bill because, according to the information we have seen, the conference report has at least as many taxes as the Senate bill.

The income tax increases for businesses and individuals are now retroactive to January 1, all the way back to the Bush administration. You would think that as a courtesy they would move it to when President Clinton was sworn in and not give President Bush credit for the higher taxes.

That is a change for the worse. The conference report has fewer spending cuts and less deficit reduction than the Senate-passed bill.

Anybody who voted against the Senate bill is going to have a tough time explaining how this package is a better deal for America. Some people say, "What have the Republicans done?" I watched Ross Perot struggle a bit on Meet the Press yesterday when he was asked about his plan. He said had he known they were going to ask, he would have brought his charts and figures.

For the record, we have tried to improve the President's plan on this side of the aisle. When the Senate debated the budget resolution in March, Senator NICKLES offered an amendment to eliminate the President's \$73 billion energy tax. The amendment was paid for with cuts in the President's proposed spending increases, and the Republicans were united in our support for this. But, unfortunately, 53 Democrats voted to defeat the Nickles amendment.

Senators LOTT and MACK offered an amendment to eliminate the President's \$32 billion social security tax increase, and, again, the amendment was paid for with cuts in the President's proposed spending increases; and, again, we Republicans were united in support of this amendment. But, unfortunately, 52 Senate Democrats voted to kill the amendment.

Later, Senator GRAMM and Senator LOTT offered an amendment to reduce the individual income tax increases, eliminate the energy tax and eliminate the Social Security tax, to be paid for by cutting back on the President's proposed spending increases. Once again, Republicans were united in their support for this amendment, but 55 Senate Democrats voted to kill it.

Adopting the Gramm-Lott amendment would have dramatically improved the President's plan by reducing the proposed tax increases by \$206 billion over 5 years without sacrificing any deficit reduction.

Even if the Gramm-Lott amendment had been adopted, the budget would still have called for \$89 billion in increased corporate and individual income taxes and user fees over the next 5 years. So even that package had

taxes in it. When I hear some of my colleagues say no taxes, I remind them that they offered an amendment with about \$90 billion of taxes in it.

Along with the distinguished ranking member of the Budget Committee and my Republican colleagues, I offered a comprehensive Republican alternative to the Clinton economic plan. It would have reduced the deficit by \$367 billion over 5 years without raising taxes—without raising taxes. I emphasize that point. Again, that was defeated. Our tax-free alternative was defeated.

So I make the point that I think everybody in the Chamber, Democrat or Republican, wants to reduce the deficit. Certainly the President does. I think everybody agrees with him. There may be some Republicans who think the deficit does not matter, but they are few and far between these days.

Republicans do not believe that all these promised future spending cuts will materialize.

If you ask the average American voter—and I was in North Carolina Saturday and in Ohio yesterday, and we had a chance to see people trying to make ends meet, trying to pay bills and educate their children, and trying to get ahead. They are pretty cynical about Congress and about any administration. They think they know what is happening, and they are probably right. They know we going to have tax increases. The administration says, "Do not worry about it, it is just going to be taxing the rich." I do not think that is the case. A lot of people are going to get a increase from 31 to 45 percent. It started last January.

Most of the people I saw in Ohio and North Carolina said, "I know you are going to raise my taxes, and you are never going to cut spending." If they are right, then we should all be in difficulty around here when it comes election time.

So, Mr. President, everybody wants to reduce the deficit. This is why we support a balanced budget amendment to the Constitution. This is why Republicans favor the line-item veto. We remain fundamentally opposed to the President's plan, because we believe that the best way to reduce the deficit and balance the budget is to cut spending first. A lot of Americans may be willing to make the sacrifice to reduce the deficit, but they are not willing to accept higher taxes for business as usual, and that is what this plan offers.

Across the country, Republicans are working together with Independents and some Democrats to try to defeat the Clinton plan. The Democrats control the White House and both Houses of Congress, so this is an uphill battle. But it is not out of reach. Some of us have been criticized for it. I have said this, and I will say it again: If the package fails, I think we have a responsibility to sit down with the President,

without any preconditions or pre-disposition, and see what we can do to reduce the deficit.

I know it is a tough vote for my colleagues on the other side of the aisle, but I think it is fair to say that there are always tough votes. I recall in 1985 when we were trying to reduce the deficit without taxes, cutting spending \$329 billion over 5 years. One Senate Democrat, Ed Zorinsky, voted with us, and every other Democrat opposed our package.

So it is not unusual for these matters to be fairly partisan.

But, it is still not too late to send a wake-up call to the President. If we can convince the six Senate Democrats who voted against the Senate bill to hold firm and persuade one more Senate Democrat to vote against this plan—and I understand the Senator from Oklahoma said he will vote against the plan—we will have won a major victory for the American people.

I underscore. I am not trying to embarrass the President. I am trying to help him develop a better plan and not get carried away with White House hype.

The statements from the White House boiler room sound like they were written by chicken little. The White House wants us to believe that the world will come to an end if the President's plan is defeated. It will not. If we are successful and defeat the Clinton plan, the sky will not fall.

Again, I go back to January when the Congressional Budget Office, the one the President wants us to rely on, said if we did not do anything the economy would create 9.4 million jobs over the next 4 years. The President said last week if we pass his package we will create only 8 million jobs. It would appear to the average observer we lose a 1.5 million jobs by considering the President's plan. We would like the President to scrap this plan.

If he does, President Clinton can count on help from lots of Republicans who stand ready to meet with him and the Democrat leadership in Congress. No preconditions.

Now, that is not an endorsement of a so-called summit,—I have been to some of them—and it is not an endorsement of tax increases. It is just a commitment by Republicans to try to help the President develop a real deficit reduction plan that works.

We think we can do better than this plan, and we hope to convince the President and his fellow Democrats that we can do it by cutting spending first, and we think that is the way to go.

There are also other ideas, we think, at least ought to be looked at: retroactive and prospective indexing of capital gains and repeal of the stepped-up basis at death. We believe those changes would release a lot of opportunities and create jobs, and we think

that it would produce revenue, not lose revenue as the initial estimate is indicated from the Joint Tax Committee.

But, finally, I guess the bottom line is what should we do for the country? What should we do for the taxpayers in the country?

And many taxpayers in the Midwest in about 9 or 10 States, particularly those who live along the Mississippi River, Missouri River, and other rivers are going to have it pretty tough this year when they find out taxes have been retroactively increased to January 1, and if they live in my State of Kansas or any other of the 9 States, it is going to be a blow. They already had one blow. They do not need another blow like this.

It is not too late. It is not too late. I assume we are going to vote on this package Friday. The majority leader said yesterday he has the votes. But it is still not too late for my colleagues to take a good look at this package and reject it for the reasons we have outlined.

Mr. President, I reserve the remainder of my time, and I suggest the absence of a quorum.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, is there a quorum call now?

The PRESIDING OFFICER. The Chair will advise there is not yet a quorum call.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas.

Mr. DOLE. Mr. President, I have been asked to request that the time I used be charged against the pending nomination.

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

The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I know that Senator FEINSTEIN is going to be down here to speak for Dr. Payzant, but she is not here yet.

So in a moment I think what I will do is suggest the absence of a quorum and the quorum call time be divided equally between both sides.

THE BUDGET

Mr. WELLSTONE. Mr. President, just for a moment I want to stray from the business at hand and maybe respond to the minority leader very briefly.

I feel that in working closely with the minority leader, with the Republicans and Democrats from the Midwestern States, certainly the distinguished Chair knows full well the real devastation and the pain of people who

are really struggling in all of our States.

Sometime this week we will bring the disaster relief bill to the floor. I think we must improve on what has been done in the House. I think the first dollar sign is not going to be enough. I think there is going to be yet another disaster relief bill.

I think we have worked to develop a formula for agriculture, and I am committed to changing that, and many, many Democrats and Republicans are. In my own mind I would like to keep that issue separate from the reconciliation bill because I think that one of the things that is significant about this reconciliation bill is that for the first time—and I emphasize this, Mr. President—in a long, long, long, long time people in the country are now seeing some discussion about who pays additional revenue or taxes based upon some principle of fairness. This really is quite a departure. It is a 180 degree turn from what we saw during the decade of the eighties where we made the most regressive tax policy imaginable for people on the top, seeing the marginal rates drastically reduced, and the people in the middle, working people, really having it socked to them.

I emphasize what the President emphasizes over and over again, what the majority leader has emphasized when we are talking about individuals and households with incomes—I forget the exact figure—\$115,000 or \$140,000—plus as being the ones that will pay a little more in terms of what needs to be done by way of sacrifice either for deficit reduction or for what little investment there is here that is based upon a principle of fairness that the vast majority of people support in this country.

I think what people have really reacted to and really are angry about is when they feel they are ripped off and they feel it is the same people who have the wealth and the income and the power who get all the breaks. This is quite different. I think this establishes a principle of fairness, which we should have had in our tax policy all along and then we never would have built up all of this debt and we would have been able to invest in ourselves and our country.

I just want to express a slight disagreement.

EXECUTIVE SESSION

NOMINATION OF THOMAS W. PAYZANT, OF CALIFORNIA, TO BE ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION

The Senate continued with the consideration of the nomination.

Mr. WELLSTONE. Mr. President, I do notice the Senator from California is here and I understand that the Senator would like 5 minutes, and I yield

5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California [Mrs. FEINSTEIN] is recognized for 5 minutes.

Mrs. FEINSTEIN. Mr. President, I thank you very much, and I thank the Senator from Minnesota for the time.

Mr. President, if there is one job that is difficult to do today it is to be a superintendent of public instruction in the State of California. Our classrooms are overcrowded, our supplies are not adequate, and the needs of our young people are burgeoning.

I rise in support today of Dr. Thomas Payzant, President Clinton's nominee to become Assistant Secretary for Elementary and Secondary Education. I am very proud of this, because Dr. Payzant, I believe, is one of the finest superintendents of public instruction in all of the United States of America.

For the past 30 years, Dr. Payzant has served as an educator and as a superintendent of schools in virtually every region of the Nation. Since 1982, my State of California has benefited from his leadership, and he has lifted the San Diego Unified School District into America's elite class of innovative learning communities.

In December 1992, Dr. Payzant received the Harold McGraw, Jr., Education Prize, which is one of the most prestigious awards in American education.

He has just completed 10½ years as superintendent of San Diego city schools, making him one of only three recent big city superintendents that have survived more than 10 years—contract renegotiation, problems of dealing with the local school board, all the panoply of distress that cause urban superintendents of public instruction very often to go somewhere else.

Leading the San Diego Unified School District is no exception to the problems. It is the eighth largest urban school district in America, and like many of the districts in my State, it has been going through some dramatic demographic changes and an extended period of declining resources.

Despite these challenges, Dr. Payzant has guided the district around pitfalls that have frustrated improvement efforts in many other districts across the country. Let me give you an example: Through his efforts, San Diego has been recognized as one of the country's best urban school districts and a model for other districts to follow. I remember when I was running for Governor and I said to the Department of Education in my city, "Who is the best superintendent to go and see?" They said, "Go to San Diego. They are doing some of the most interesting educational work." His reforms have produced awards and results, and let me give you some of them.

Through the 1980's student achievement in reading, language arts, and

math has improved steadily in San Diego. It is especially important to know that progress was made in the beginning to close the achievement gap which exists between African-Americans, Hispanics, Asians, and white students. During Dr. Payzant's tenure, a core curriculum was implemented requiring all students to take rigorous courses in basic academic subjects.

One of the things that I have found that has been the product of education of the last, oh, I would say 15, 20 years, is that we have strayed away from teaching youngsters the basic fundamentals. I submit to you, Mr. President, as I look out at these young faces of pages, I say if you do not have your basic fundamentals, if you cannot read and write, subtract, multiply, divide and add, recognize China on a map, or do the things that are necessary to get that fundamental education, I am convinced you cannot succeed in the workplace as it is today.

It is that much of an imperative.

Dr. Payzant has recognized this and he has provided the leadership that has stressed excellence in education. And that is something that we should never, never compromise.

As a former big city mayor, I am especially impressed with his ability to bring many different people together from different economic, social, and racial environments and form a consensus and move the district on, rather than let the district get tied up in moribund indecision between various groups.

Equally important, he is not only respected for his good administrative and leadership abilities, but for his personal integrity as well. Throughout his tenure in San Francisco, he has upheld his responsibility to educate our young people in the finest of traditions. Those traditions are excellence, learn your fundamentals—reading and writing and arithmetic.

The children of San Diego are better off for the superintendency of Dr. Thomas Payzant. For these reasons, I urge your support of Thomas Payzant.

I thank the Senator.

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mr. PELL. Mr. President, I want to express my strong and enthusiastic support of the nomination of Dr. Thomas Payzant to be the Assistant Secretary for the Office of Elementary and Secondary Education. This is a nomination that merits overwhelming approval.

Dr. Payzant is without question a man of great integrity. As one of our Nation's longest-serving and most accomplished urban school superintendents he has gained the respect of educators and administrators nationwide. His superb record has won him national recognition as one of only three recipients of the 1992 Harold W. McGraw, Jr.

Prize in Education. The Executive Educator has named him one of the 100 best school administrators in North America.

As superintendent of the eighth largest and often-troubled urban school district in the Nation, he has repaired the school district's integration program, mended the relationship between the business community and the school district, and made progress in beginning to close the achievement gap which exists between African-Americans, Hispanics, Asians, and white students. He has expanded the access to an enrollment in advanced placement programs as well as implementing a rigorous core curriculum. Under Dr. Payzant's leadership, the San Diego City School District has become a national leader in its field testing of alternative assessment of student achievement, as well as faculty and student accountability. His list of accomplishments as a visionary and innovative leader is never-ending.

Most importantly, Dr. Payzant possesses a true commitment to our children, the hope and strength of our future. He has dedicated his life to helping to provide our students with a world-class education, to empowering our teaching force and to encouraging our parents to invest in their children's education. By entrusting the Office of Elementary and Secondary Education to Dr. Payzant we will undoubtedly be ensuring the best possible opportunity for our children to succeed and therefore, for our Nation to succeed.

As we stand poised for what could prove to be a historic reauthorization of the Elementary and Secondary Education Act, it is of immense importance that we have an individual of his recognized leadership and expertise as our Assistant Secretary for Elementary and Secondary Education.

I urge my colleagues to join me in confirming Dr. Thomas Payzant.

The PRESIDING OFFICER. Who yields time?

The Chair would advise that the Senator from Minnesota controls 2 minutes and 22 seconds, the minority side has 32 minutes remaining.

Mr. HELMS addressed the Chair.

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

Mr. HELMS. Mr. President, let me participate in what is perhaps a convoluted debate on various nominations constructed under unanimous consent wherein there are, by actual count, three Senators, including the distinguished occupant of the chair, in this Chamber.

So we can thank the Lord, maybe, for C-SPAN, for television in the Senate. And I must say that I voted against television in the Senate, because I feared it would create some prima donnas when the Senate already had enough of those. But, in any case, I now welcome the great work done by C-SPAN.

Mr. President, Senators may recall the campaign undertaken last year by the homosexual crowd and their allies to try to force the Boy Scouts of America to accept, as leaders and members, homosexuals along with boys who refuse to accept the Scout oath of allegiance to God and country.

Who would have guessed then that if Bill Clinton were elected President, some of the leaders of these arrogant dissidents would be nominated for high-level jobs in the U.S. Government?

Either this year, President Clinton nominated—and the Senate confirmed—Roberta Achtenberg to be Assistant Secretary of Housing for Civil Rights—the same Roberta Achtenberg who led the fight in San Francisco to expel the Boy Scouts from the San Francisco schools and to cut off their United Way funding.

Today, the Senate has before it, and will presumably vote on tomorrow, President Clinton's nominee for Assistant Secretary for Elementary and Secondary Education a man named Thomas Payzant, who, as superintendent of San Diego's public schools, led a similar and successful effort to kick the Scouts out of San Diego's schools.

Where Roberta Achtenberg asked the citizens of San Francisco if they really want [their] children learning the values of an organization such as [the Boy Scouts]—Mr. Payzant told the citizens of San Diego last December in reference to the Boy Scouts:

We can't tolerate that kind of organization [the Boy Scouts] working with young people." [LA Times 12/16/92]

Since the Boy Scouts have a national policy which forbids homosexuals from being in leadership positions, it would be a violation of district policy * * * to allow them to continue with sponsorship of programs during the regular school day. [San Diego Union-Tribune 12/16/92]

Then, in January, Mr. Payzant said:

What I can't accept is the underlying assumption that if somebody is gay or lesbian, then there is a greater chance of irresponsibility in terms of improper behavior toward young people. [LA Times 1/11/93]

Mr. President, Mr. Payzant's problem is that he has abused the public trust to discriminate against the Boy Scouts because they do accept the assumption, as do their parents and the majority of Americans, that homosexuals pose a greater than average threat to young people. The statistics prove it.

In light of all the problems currently plaguing our young people—drug abuse, teen pregnancy, gang violence, to name a few—most Americans are proud of the Boy Scouts for standing up for traditional family values in the schools. As the Scouts' San Francisco regional director, Buford Hill, put it:

It is unthinkable that in a time when worries about drugs, crime, education, youth, and gangs are at an all time high, some would direct their efforts at attacking an organization that has been a bulwark for values and the family.

The leaders in the homosexual movement find the Boy Scouts threatening, very threatening, to the perverse lifestyle of homosexuals. The Scouts are a bulwark for values and the family. The Scouts—and the values they represent—stand as a singularly significant pillar against the homosexuals' efforts to redefine the family to include homosexual couples and to force the rest of us to accept their lifestyle as normal.

Mr. President, some may wish to accept that lifestyle as normal, but not this Senator.

What makes Mr. Payzant's disdain for the Boy Scouts so important is that President Clinton proposes to put him in charge of national policy regarding high schools and elementary schools across the country.

U.S. News & World Report published an article last December, "Hidden Power in Washington: The Federal Jobs That Really Make a Difference," that had this to say about the position to which Mr. Payzant had been nominated:

One of the hottest spots in Washington. * * * Whoever has this job will be the point person for most of the Clinton school reform agenda. The assistant secretary administers a \$9 billion budget, nearly one-third of the department's total, covering everything from Chapter 1 funds to disadvantaged students to teacher training programs.

If confirmed, Mr. Payzant can use his office, and the power of Federal funding, to assert to parents all across the country, as he did to parents in San Diego, that having the Boy Scouts organization working with young people should not be tolerated.

To that I say, "horsefeathers."

Mr. President, Mr. Payzant has other educational ideas worthy of the attention of American parents. In 1982, superintendent of the Oklahoma City public schools, he attacked what he characterized as the ineffectiveness of religious schools. A rather curious statement, he said:

You don't learn science, history, and government through an entirely religious background. It is not effective. [Daily Oklahoman 3/29/82]

He better look at the statistics on that and the products of church and religious schools. I have a daughter who is a principal of an Episcopal school. She happens to be a Baptist, but that shows how tolerant the Episcopalians are—maybe because she is a pretty good principal.

I can tell you that that school turns out crackerjack young people, and I will compare them with any schools anybody wants to talk about.

Mr. President, during Mr. Payzant's tenure in San Diego, he prohibited teachers from giving failing grades, and mandated that no elementary student be held back to repeat a grade. A principal in one of San Diego's schools summed it up best when he concluded "[t]his [policy] will lead to a position of no standards. It's nonsense."

Also during his time in San Diego, Payzant successfully urged the school board to permit girls to compete with boys in contact sports such as varsity football and wrestling.

From 1985 through 1991 he led an ultimately successful campaign, and despite overwhelming public opposition, established school health clinics that include reproductive, abortion, and contraceptive counseling, referrals, and services among the health programs they offer students from kindergarten through 12th grade.

Payzant also instituted a program in the schools called Project 10 that informs students—falsely—that 1 in 10 of them is homosexual; it also refers children with normal questions about puberty to homosexual groups for counseling where they are often told they are having adjustment problems because they are homosexual.

Superintendent Payzant also set up a system for school programs—like the gifted and talented program—to ensure that the diversity of the student body would be represented in every program. This was simply a requirement that quotas based on race—not merit—would determine which students were able to participate in school programs.

Bear in mind the job for which President Clinton has nominated this man, which nomination the United States Senate is going to confirm tomorrow with a few dissenting votes—the vote of JESSE HELMS being one of them.

Mr. President, the bottom line is that Mr. Payzant's chief interest is not in educating our children, but rather in imposing upon the Nation's schools his own leftwing extremist social agenda. The Los Angeles Times reported in 1986 that:

Payzant's relish for tackling social issues has embroiled the [San Diego] school board in delicate questions of contraception, family values, privacy, equal rights, and international politics.

But Larry Lester, former San Diego School Board member, perhaps said it best:

Tom is promoting a social agenda. He is clearly giving direction to the staff to support his ideas of what is appropriate public policy. It is not the business of the school system to be promoting social change. That's beyond its legitimate function. [LA Times 7/27/86]

Mr. President, the wisdom of putting someone in charge of America's Federal elementary and secondary education policy who believes the values of the Boy Scouts of America are unfit for children to learn is like putting the fox in charge of the hen house. For that we can thank the President of the United States.

I shall not vote to put this man in charge of educating America's children. Sooner or later, I suspect the American people will be asking Who did vote to confirm Mr. Payzant.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, let me just respond for a moment or two to the comments of the Senator from North Carolina. From listening to the Senator, you might think that Tom Payzant was involved in an effort to ban the Boy Scouts from San Diego, or you might think that in some sort of way he was anti-Scout. Let me first of all say that kind of attack is one of the things I think has bothered Mr. Payzant most. He was a Scout himself. His son is a Scout. And his daughter is a Girl Scout.

To just simply get the facts straight for the RECORD, for the Senate, what Tom Payzant did in San Diego was he stopped the Learning For Life Program.

This particular program was a program carried out in 15 out of 155 schools during school time. Sixty Scout groups continued to meet outside school time unaffected and they continued to have their program. So there was no banning of the Boy Scouts from San Diego.

In addition, I also need to make it crystal clear that the issue for Mr. Payzant was an issue of equal employment opportunities, that there should not be any discrimination in this regard. That was the why of the decision. The elected school board in San Diego unanimously—unanimously—supported his proposals.

I might also point out on the floor of the Senate right now, by way of response, that Big Brother, Big Sisters, and the Girl Scouts have the same kind of antidiscrimination policy that includes sexual orientation.

Mr. President, I do not have time, given the time I have left on the floor of the Senate, to respond to all that the Senator from North Carolina had to say. But one more time I want to make the point that Tom Payzant is one of the most qualified individuals ever to come before the Senate to be Assistant Secretary for Elementary and Secondary Education. There was bipartisan support in our committee, bipartisan support from both Representatives in San Diego, enumerable accomplishments in San Diego and, for that matter, in other schools in other States, the recipient of the prestigious McGraw Award for Excellence in Education.

I think these attacks are peripheral and marginal and get away from the real issue.

Mr. President, I ask unanimous consent to print additional information in the RECORD.

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

U.S. DEPARTMENT OF EDUCATION,
Washington, DC.

Hon. EDWARD KENNEDY,
Hon. PAUL WELLSTONE,
U.S. Senate, Washington, DC.

DEAR SENATORS KENNEDY AND WELLSTONE: I would like to respond to some comments made recently concerning my nomination.

The suggestion that San Diego City Schools are unique in permitting girls to participate in traditionally all-male sports is false. San Diego is not at all unique in this regard. In fact Title IX requires school districts nationwide to provide equal access for boys and girls to participate in sports. Students cannot be barred from participation based on gender if they wish to participate in those sports. As Superintendent of San Diego City Schools I took seriously the responsibility of following the law.

San Diego City Schools did not eliminate the "F" grade from its grading system. Several years ago the San Diego Drop Out Prevention and Recovery Roundtable, a group of educators and community people appointed by the school district, recommended that the "F" grade be replaced by "no credit" in the grading system used in secondary schools. As Superintendent I backed the group's recommendation, but the Board of Education decided to retain the "F" grade in the secondary schools' grading system and allow students to replace the "F" grade once they retake a course and pass it.

Project 10, a program designed to counsel gay and lesbian students, currently operates in the Los Angeles City Schools. It does not now, nor has it ever operated in the San Diego City Schools. As Superintendent, I did not recommend the adoption of Project 10 in San Diego. Several years ago, SDSD began to hear concerns raised about the district's lack of attention to the issues facing gay and lesbian students. The district's response was to arrange a one day staff development program for some district staff. A resource person who works with Project 10 was invited to San Diego for the counselor's workshop on that day. Again, SDSD did not establish a Project 10 program.

With regard to the Boy Scouts, the elected Board of Education adopted a nondiscrimination policy which included sexual orientation. This policy appeared to be at odds with Boy Scout sponsored programs which took place during the regular school day when students were in compulsory attendance. A Boy Scout myself, and long supportive of the programs the Boy Scouts sponsor, I was faced with a very hard decision. After long and thoughtful discussion, I recommended that the school District continue the widespread use of school facilities for Scouting programs after normal school hours, but disallow such programs during the regular day when students are in compulsory attendance. The board unanimously agreed.

The policy affected in-school Boy Scout programs in only four of one hundred and ten elementary schools. The secondary school Career Awareness Program, sponsored by the Scouts was eliminated in eleven secondary schools. After school programs continue in more than sixty elementary schools.

I was quoted in a December 6, 1992 Los Angeles Times article as saying, "we can't tolerate that kind of organization working with young people." This quotation does not reflect the full context in which it was made. I was making the point that it would not be proper to have any outside organization that

violates the San Diego City Schools non-discrimination policy work with children during the regular school day when students are in compulsory attendance.

The same article also quoted me speaking about my experiences as a scout in the early 1950s when I "... was taught the value of tolerance and inclusiveness and to challenge those who engage in stereotypes and discrimination." "It's ironic," I also was quoted as saying, "that I'm using what I learned as a scout to challenge that organization now ... the time to discriminate is past if we really believe in those values."

Finally, while school-based health clinics exist in some San Diego city schools, they are prohibited from distributing any kind of contraception. The suggestion that school-based health clinics in San Diego offer advice in the area of abortion is false.

Thank you for permitting me to set the record straight on these issues.

Sincerely,

THOMAS W. PAYZANT.

[From the San Diego Union-Tribune, Mar. 11, 1993]

THE PAYZANT RECORD: STUDENTS BENEFITED FROM HIS REFORMS

The San Diego Unified School District faces an exceptional challenge in finding a replacement for Superintendent Tom Payzant, who is joining the Clinton administration as assistant secretary of education for elementary and secondary education.

During his 10-year tenure in San Diego, Payzant has guided the country's eighth-largest school district around pitfalls that have confounded superintendents in other urban districts.

In the process, he built a national reputation as a reformer who could produce practical results. The 125,000 students here have been better off for his decision to stick with San Diego far longer than is typical for superintendents of major school districts.

San Diego Unified is something of an anomaly among urban districts. It is comparatively free of the violence that plagues New York, Los Angeles, Chicago, Detroit and Philadelphia. The bitter racial and ethnic tensions that have created animosity in these school districts are not common here. To the contrary, integration of the city schools has proceeded during the last 10 years without close court supervision or a corresponding decline in student achievement.

Payzant deserves much of the credit for that.

He was determined from the outset to get the community more involved in schools. Central to his strategy was site-based management, under which administrators, teachers and parents share in the decision-making at individual schools. This spirit of cooperation has paid dividends both inside and outside the classroom.

San Diego students routinely score above the state and national averages on standardized tests. This is particularly impressive when you consider the diverse nature of the student population.

In fact, San Diego Unified has maintained its student achievement level while undergoing dramatic demographic changes that have lowered test scores in other urban school systems.

Payzant has earned praise for expanding the district's magnet program to promote voluntary racial integration. He pushed for a core curriculum in high schools to ensure that all students have a solid grounding in the basics. He raised the district's graduation requirements. He persuaded more than

400 local businesses and service organizations to give kids a helping hand through tutoring and mentoring programs. And his New Beginnings program at Hamilton Elementary has enabled parents and students to avail themselves of counseling, immunization, dental care and other county social services.

Although this newspaper has differed with Payzant on several policy issues, we've always known him to be a principled proponent of public education. The person chosen to succeed him should be no less committed to the reforms that have helped make San Diego Unified one of the nation's better urban school districts.

[Editorial by Vice President and General Manager Ed Quinn, KGTV, June 21 and 26, 1993]

CONFIRM DR. PAYZANT

A Boy Scout basher? Tom Payzant? We don't think so.

But some folks are calling him that, saying that when Payzant sat here in the board room as San Diego's school superintendent, he tossed the scouts out and promoted gay values.

These accusations could spell trouble for Payzant's nomination to be an assistant secretary of education. A Senate committee may hold hearings on the nomination because of the protests from a few folks filled with misinformation and inaccuracies.

The fact is that Payzant followed district policy when he said scouts couldn't do activities during class periods because they ban homosexuals from leadership positions. But he also made sure scouts could meet at schools after classes—that's fair.

We think Tom Payzant ought to be confirmed by the Senate, and that Senate committees have a lot better things to do with their time than engage in a witch hunt. We hope Payzant's confirmation comes soon.

That's our opinion. What's yours?

[From the San Diego Union, Feb. 10, 1990]

CHALLENGES

During his seven-year tenure as superintendent of the San Diego Unified School District, Tom Payzant has often generated progress and controversy in equal measure. This newspaper has never hesitated to criticize his policies whenever they appeared not to serve the best interests of students. Nevertheless we have always respected Mr. Payzant as a consummate professional. More importantly, the record shows that he has brought about significant improvements in the city schools.

We endorse, therefore, the school board's unanimous desire to persuade Superintendent Payzant to remain in San Diego rather than accept a potential offer to head the school system in Dade County, Fla.

Mr. Payzant's primary interest in the Miami job appears to stem from the challenge of guiding the nation's fourth-largest school district. But the challenge of making the nation's eighth-largest district the best it can be is no less compelling.

Despite Mr. Payzant's many accomplishments in San Diego, much remains to be done. For instance, overall student test scores have risen steadily during the last seven years. Yet the scores of black and Hispanic students have been slow to improve. To address this problem, he has begun to implement a common core curriculum throughout the district, ensuring that all students receive a solid grounding in the basics. But it will be several years before the curriculum is in place at all schools.

The district's successful magnet program, promoted strongly by Mr. Payzant, has helped to integrate the school system and enabled thousands of students from widely different backgrounds to receive specialized instruction. On the other hand, Gompers Secondary School, which has long been the pride of the magnets, has developed serious problems that need to be resolved.

Superintendent Payzant deserves credit for the district's ambitious restructuring program to promote school-based decision-making in place of micromanagement from the Education Center. This concept, which empowers principals and teachers to make major decisions that directly affect their students, has been adopted by 40 of the district's 152 schools. This good idea has improved staff morale and should bring about greater accountability. The continuation of this program could well depend on whether Mr. Payzant remains on the job.

Although Mr. Payzant's drug and dropout prevention programs have pointed the district in the right direction, a continuity of committed, aggressive leadership is required to make headway in solving these problems, which inflict thousands of San Diego students each year.

Since assuming his duties seven years ago, Superintendent Payzant has thrived on the challenge of raising the educational standards in the city schools. Having guided the district to new heights, he now has the opportunity to take it even higher.

[From the Los Angeles Times, Aug. 3, 1986]

HIGH MARKS FOR PAYZANT

Ever since the civil rights movement began in the 1950s, local school boards have often been given the unwelcome task of refereeing between factions pushing for and resisting social change.

The trustees of the San Diego city schools have faced a steady series of difficult social problems in recent years, perhaps not entirely coincidentally during the tenure of Supt. Thomas W. Payzant.

Looking at the social issues Payzant has brought to the board—as Times staff writer Leonard Bernstein recently did for the current year—one finds topics that have only a symbolic relationship with education, such as condemning South African apartheid, and those that go to the heart of educational opportunity, such as eliminating the unfair practice of "tracking" students.

Also represented are controversies over attempts to address the societal problems students bring with them to class, such as Payzant's decision to allow undercover narcotics officers to infiltrate campuses and his unsuccessful proposal to create a school health clinic.

Critics of Payzant have accused him of having a liberal social agenda that he seeks to impose on the school board. But he argues that most of the issues have come to the surface in a natural way, and he has simply brought them to the board's attention. He plans to continue doing that, without knowing what the next prickly topic to confront them will be.

It is unfair to paint a one-dimensional portrait of Payzant as a superintendent more interested in social change than education. He got high marks from the school board in his recent job performance review.

Although he was admonished to improve communications with principals and teachers, he was praised for improving student discipline and reducing absenteeism, implementing several new education programs and conducting a study of the district's future enrollment.

It is inevitable that social issues will continue to burden the schools as long as society's conflicts are propelled by people wanting more out of life for their children—and as long as the public school represents the fulcrum of American aspiration.

Although we have not always agreed with the ultimate decisions, we think the superintendent and the current school board generally have dealt with these issues in a responsible way and to their credit.

Tom Payzant has showed that he's both sensitive and realistic about these problems, and in his four years here he's handled them well.

LETTERS RECEIVED CONCERNING THE NOMINATION OF DR. THOMAS W. PAYZANT AS THE ASSISTANT SECRETARY OF EDUCATION FOR ELEMENTARY AND SECONDARY SCHOOLS

LETTERS OF SUPPORT

Education groups

1. Keith Geiger, President, National Education Association
2. Gordon M. Ambach, Council of Chief State Officers
3. Richard D. Miller, Executive Director, American Association of School Administrators
4. Shirley N. Weber, President of Board of Education, San Diego City Schools
5. Samuel G. Sava, Executive Director, National Association of Elementary School Principals
6. William M. Soult, President, National School Boards Association
7. Albert Shanker, President, American Federation of Teachers
8. Dr. Timothy J. Dyer, Executive Director, The National Association of Secondary School Principals
9. Dena G. Stoner, Executive Director, Council for Educational Development and Research
10. Stanley N. Katz, President, American Council of Learned Societies
11. Pat S. Henry, President, The National PTA
12. William Crane, President, San Diego Teachers Association
13. Donald M. Stewart, President, The College Board
14. Ruth Mitchell, Associate Director, Council for Basic Education
15. A. Graham Down, President, Council for Basic Education
16. Dale Carson, Assistant Superintendent for the California Learning Assessment System, California Department of Education
17. Davis Campbell, Executive Director, California School Boards Association
18. Carol M. Barker, Secretary and Vice President, Associational Affairs, The College Board
19. Peter D. Relic, President, National Association of Independent Schools
20. Gregory R. Anrig, President, Educational Testing Service
21. Harry C. Weinberg, San Diego Superintendent of Schools
22. William E. Ritter, Jr., President, San Diego City Schools Peace Officers Association
23. Karen Leveridge, Director, Education Department, Oklahoma State Chamber of Commerce and Industry
24. Laura F. Murray, Principal, Homewood-Flossmoor Community High School District 233
25. Dr. Peter B. Holland, Superintendent of Schools, Belmont, Mass.
26. Sarah S. Heckcher, College Board Trustee, Springside School
27. Patt Sloan, President, San Diego Unified PTA Council

28. William D. Dawson, Acting State Superintendent of Public Instruction, Sacramento, Calif.

29. Arnold L. Mitchem, Ph.D., Executive Director, National Council of Educational Opportunity Associations

30. Michael Casserly, Executive Director, The Council of the Great City Schools

31. Sartee C. Ruffin, Jr., Executive Director, National Alliance of Black School Educators, Washington, D.C.

32. Homer D. Peabody, Jr., M.D., Director, Rees-Stealy Research Foundation

33. Vahac Mardirosian, Executive Director, Parent Institute for Quality Education

34. James J. O'Connell, Executive Director, Council of School Superintendents

Business/Chamber of Commerce

1. Kay Davis, Executive Director, Greater San Diego Chamber of Commerce

2. William H. Kolberg, President, National Alliance of Business

3. Philip C. Blair, President, MANPOWER Temporary Services, Washington, D.C.

4. Mel Katz, Executive Director, MANPOWER Temporary Services, Washington, D.C.

5. Gilbert Partida, President Greater San Diego Chamber of Commerce

6. Sophie Sa, Executive Director, Panasonic Foundation, New York, NY

7. Murray L. Galinson, President, San Diego National Bank

8. David E. Janssen, Chief Administrative Officer, County of San Diego

9. Harold W. McGraw, Chairman Emeritus, McGraw-Hill, Inc.

10. Frances R. McCrackin, Assistant Vice President, San Diego Trust and Savings Bank

11. Jack McGroy, City Manager, The City of San Diego

Universities

1. Jerome T. Murphy, Professor and Dean, Harvard University

2. Dennis Palmer Wolf, Senior Research Associate, Harvard University

3. Evonne Seron Schulze, Board of Trustees, San Diego Community College District

4. Fred M. Newmann, Director of Center on Organization and Restructuring of Schools, University of Wisconsin

5. Author E. Hughes, President, University of San Diego

6. Richard C. Atkinson, Chancellor, University of California, San Diego

7. A.P. Gallego, Chancellor, The San Diego Community College District

8. Elizabeth K. Stage, California Science Project, University of California

9. Theodore R. Sizer, Chairman, Coalition of Essential Schools, Brown University

10. Stanley Chodorow, Associate Vice Chancellor—Academic Planning—Dean of Arts and Humanities, University of California, San Diego

11. Thomas B. Day, President, San Diego State University, California

12. Audrey Cohen, President, Audrey Cohen College

13. Lauren B. Resnick, Director, LRDC Co-Director, New Standards

14. Paul Saltman, Professor, University of California, San Diego

Civic groups

1. The Rev. George W. Smith, Christ United Presbyterian Church of San Diego

2. Richard A. Collato, President, YMCA of San Diego County

3. R.E. Dingeman, Scripps Ranch Civic Association

Government

1. David E. Janssen, Chief Administrative Officer, County of San Diego

2. Jack McGroy, City Manager, The City of San Diego

3. Jim Roache, Sheriff, County of San Diego

4. Lucy Killea, California State Senator

5. Mike Gotch, Assembly California Legislature

6. Freddy Williams, Oklahoma House of Representatives

7. Tom Connolly, Assembly California Legislature

8. George H. Russell, Director, Lane County Human Resources and Management Services Department

9. Valerie Stallings, Councilmember, The City of San Diego

10. Deirdre Alpert, Assembly California Legislature

Personal letters

1. Richard A. Loescher, M.D., Eugene, Oregon

2. Thomas L.W. Roe, Eugene, Oregon

3. Steven J. Davis, M.D., La Mesa, California

4. Marion C. Krider, Silver Spring, Maryland

5. Leon W. Parma, La Jolla, California

6. Richard A. Burt, San Diego, California

7. Dorothy L.W. Smith, San Diego, California

8. Kate H. Klumpp, San Diego, California

9. Kenneth R. Rearwin, California

The PRESIDING OFFICER. Who yields time?

The Chair notes that the minority controls 15 minutes 26 seconds yet remaining on this nomination.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, parliamentary inquiry. Since the manager of the bill for the nomination is here—and I think I can speak for the Republicans—is it proper to ask for the yeas and nays now, even though there is not a sufficient second by arithmetic?

I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I will suggest that Senator COATS is on his way to speak on this nomination.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. COATS. Mr. President, I know we are running close to time on the Dr. Payzant nomination.

Let me ask, how much time is remaining?

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. COATS. I wonder if in that 30 seconds I could ask unanimous consent to speak for 5 minutes on the nomination.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

The Senator from Indiana has the floor.

Mr. COATS. I thank the Chair.

Mr. President, today the Senate is considering several nominations, two of which have come through the committee on which I serve, the Labor and Human Resources Committee.

First, let me just briefly talk about the nomination of Dr. Sheldon Hackney to be Chairman of the National Endowment for the Humanities. As you know, there has been some controversy relative to his nomination. I have carefully looked at the material, read the evidence. I have personally met with Dr. Hackney for an extended discussion in my office. I questioned him at length in committee.

On that basis, while I do have reservations about his past actions and some of his judgment, I have found these to be reservations and questions, not disqualifications. And so I intend to support the nomination of Dr. Hackney when it comes to this floor. I know that will be the next item. I will have more to say, or at least submit a more detailed statement on that.

Mr. President, as to the nomination of Dr. Thomas Payzant to be Assistant Secretary of Elementary and Secondary Education, I opposed his nomination in committee and intend to vote against him in this chamber.

I am doing so because I have not been able to satisfy in my own mind Dr. Payzant's position relative to a number of issues. His policies, like them or not, are more of the same which has lead our public school system to the level of mediocrity I think most who have looked at the situation understand. Dr. Payzant is simply going to continue, in my opinion, the same types of policies, maybe with a little more zest and a little more enthusiasm but I do not believe with any more successful results than what has been tried in the past decade or two.

But my main concern, the thing that disturbs me the most has been Dr. Payzant's personal involvement in removing the Boy Scouts from the San Diego public school system.

At the recommendation of his own task force on gay, lesbian and bisexual issues Dr. Payzant changed the schools' discrimination code to include sexual orientation as a protected class, and then used it to drive the Boy Scouts out of the school. Dr. Payzant was quoted in the Los Angeles Times in December of 1992 as saying of the Boy Scouts; "We cannot tolerate that kind of organization working with young people."

During the hearing I asked Dr. Payzant directly. I said, Dr. Payzant, did you really mean that statement? Is that statement an accurate quotation from you by the Los Angeles Times? Did you really mean that we cannot tolerate the Boy Scouts working with young people? I did not talk about

working with young people during the school day or after the school day or what type of program they were providing in the school. I just simply said is that an accurate statement and do you stand by it? And he absolutely reaffirmed that statement and said I absolutely do stand by it.

He resigned from the board of directors of the San Diego Boy Scout chapter as a consequence of that.

It is important to note I think that Dr. Payzant at that hearing affirmed that the program that the Boy Scouts were bringing to the San Diego public schools in no way discriminated against homosexuals or promoted any type of antigay agenda. It had nothing to do with that. It was a program that had to do with an entirely different subject, and Dr. Payzant admitted that what the Boy Scouts were teaching and assisting with in the schools absolutely had nothing to do with the policy that he had initiated. But he said we cannot tolerate that type of organization working with young people, which I find not only disturbing, but very, very curious.

On two separate occasions the San Diego school district legal office stated that the Learning for Life Program taught by the Boy Scouts was not discriminatory. I quote from their legal opinion.

Neither the Learning for Life Program nor the in-school scouting program contains any discussions relating to gay rights issues. Consequently, we see no support for the contention that sexual orientation discrimination is occurring within these programs.

That is Dr. Payzant's legal counsel. This is not our legal counsel. This is not legal counsel for the Boy Scouts. This is Dr. Payzant's legal counsel, the people he turned to to say, give me your legal opinion as to whether the Learning for Life Program presented by the Boy Scouts in any way discriminates or violates this ordinance that I put through.

So Dr. Payzant took these actions against the Boy Scouts despite his own legal counsel's opinion, despite the fact that the parents in his school district, by apparently more than a 3-to-1 ratio, according to the Los Angeles Times article, wanted the Scouts to stay involved in the program. The local Parent Teacher Associations formally asked that the Scouts not be ousted, with Dr. Payzant's move very, very directly to have them removed.

Mr. President, it seems to me that the Clinton administration has a real distaste for the Boy Scouts of America because they keep sending us nominations of individuals who appear to have taken it on almost as a crusade to drive the Boy Scouts from their respective jurisdictions.

First, we saw Assistant Secretary for Housing at HUD, Roberta Achtenberg, come before this body. She was, as has been pointed out on this Senate floor,

very actively involved in removing Boy Scouts from the San Francisco area, funding of their program and so forth.

Second, we have seen the Clinton Interior Department support a decision to ban the Boy Scouts from volunteering in national forests in the West to help clear the trails as the Scouts have done for many, many years—typical Scouting activity. But because the organization does not believe that when you are working with young boys it is a wise policy to have acknowledged homosexuals as Scout leaders camping out, working with the boys because they feel that presents some problems, they now, with the support of the Clinton administration, are no longer able to help clear trails or clear brush or do the things that Scouts engage in in our national forests.

Now we see a nominee for Assistant Secretary for Education holding a very important position, Dr. Thomas Payzant, who says we cannot tolerate that kind of organization working with young people.

I do not understand what the administration has against the Boy Scouts. I do not understand why they continue to send nominees that have been so actively involved in removing Scouts from a number of jurisdictions and organizations in this country. That disturbs me. I could not get what I thought were reassuring or reaffirming answers from Dr. Payzant when he came before our committee.

Mr. President, the most disturbing thing of all is what appears to be now the spin coming out of the White House. Apparently somebody down there has decided that they are in a little bit of political heat, sending up these nominees and having all of this anti-Scout focus pointed toward the administration. So they have now come up with something to present the opposite image. It is ironic that today, August 2, the very day we are discussing the nomination of the man who says we cannot tolerate that kind of organization working with our young people, this very day, the President and Mrs. Clinton are hosting members of the Boy Scouts at the White House. They have put out a memorandum to all Members of Congress:

Today is "Scouts in Uniform Day" at the White House. Monday, August 2, 1993, from 8 until 12 noon, any Scout in uniform is invited to the White House. No tickets are required. Admission is on a first-come first-serve basis.

The memorandum states President and Mrs. Clinton are pleased to invite all Members of the Boy Scouts to a special Monday, self-guided tour of the White House. They tell them where to park and so forth.

If the groups are interested in giving the First Family souvenirs or commemorative patches, they would be most pleased to accept them. The patches will become part of a permanent collection. The First Family is excited about having these young people

visit the White House and we hope that your constituents will take advantage of this opportunity.

Some people would call that spin doctor. The White House has done a much better job at it since it hired Mr. Gergen. I have no idea whether this is Mr. Gergen's idea or not. All I know is that the public relations office at the White House has done a lot better job of trying to cover their tracks when they find themselves in political trouble. And as such, someone has decided that—Mr. President, I wonder if I could have 1 more minute; I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. Reserving right to object, I will not object. I just wanted to apologize to the Senator. The reason I am a little reluctant to go any further is I have been here for several hours ready to debate. I have to leave.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Indiana is recognized for 1 additional minute.

Mr. COATS. I thank my friend from Minnesota. I thank the Chair.

I find it more than ironic, I really find it hypocritical, that on the day the White House would bring up the nomination, and the Senate would bring up the nomination of an individual who said we cannot tolerate that kind of organization working with young people, that the President and First Lady have issued an invitation to those same young people to cordially invite them to the White House, and say that they are excited about having them visit them in the White House.

The White House cannot have it both ways. Either this is an organization that they are proud to host in the White House and to have present souvenirs and commemoratives to the President and First Lady, or they are supportive of individuals who occupy high positions in this administration who are bound and determined to undermine and destroy this fine organization.

They ought to decide which one it is. Because in doing the public relations spin at the White House on the same day they are bringing up an individual who says we cannot tolerate these kinds of young people, this kind of organization working with young people, to me is an irreconcilable difference.

With that, I thank the Chair, and I yield back whatever time I have remaining.

Mr. GORTON. Mr. President:

The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.

President Clinton has sent this Senate several nominees whose actions and stated ideologies are in direct conflict

with this classic principle of tolerance articulated by John Stuart Mill. The Constitution empowers a President to choose whomever he wants to serve in his administration, but the Senate has the responsibility to give its advice and consent to the President's choices. With respect to nominees who serve at the President's pleasure, I have always been inclined to grant the President a wide latitude in his choices. Consequently, I have consented to nearly all of the President's nominees, including many with whom I disagree philosophically. The Secretary of the Department of Labor, Robert Reich, and the Secretary of the Department of Health and Human Services, Donna Shalala are two individuals whose nominations I consented despite profoundly different political views.

What is unacceptable to me and to many thoughtful Americans are nominees who are intolerant of conflicting views, who have used or are likely to use political power to punish their opponents or to pursue policies destructive of the social fabric which binds us together as Americans, or who are indifferent to fundamental constitutional principles. President Clinton, regrettably, has sent the Senate at least four such nominees including Roberta Achtenberg, Lani Guinier, Sheldon Hackney, and now, Thomas Payzant.

The central question for Members of the U.S. Senate debating the nomination of Thomas Payzant to be Assistant Secretary for the Office of Elementary and Secondary Education is his acceptance or rejection of the classic principle of tolerance articulated by John Stuart Mill. The blatant intolerance and hostility the nominee has shown in public office and the misuse of his political power to inhibit the programs and the exercise of the rights of those with whom he disagrees.

There is a crucial distinction between legitimate advocacy of an agenda and a hostile and irresponsible intolerance of those who do not share that agenda, between spirited advocacy and punitive harassment.

Dr. Payzant crossed this line during his well-known campaign against the Boy Scouts of America while he served as superintendent of the San Diego City School District.

In March 1992, Payzant formed a Committee on Gay, Lesbian, and Bisexual Issues in Education. The committee produced a report in June 1992, with a variety of recommendations including a proposal to add sexual orientation to the school district's anti-discrimination policy.

In November 1992, Payzant brought the findings and recommendations of the committee to the school board which unanimously adopted the recommendation to add sexual orientation to the anti-discrimination policy.

In December 1992, Payzant recommended to the school board that

based on the new district antidiscrimination policy and the Boy Scouts membership policy prohibiting homosexual troop leaders, the Boy Scouts be prohibited from conducting programs during regular school hours. After-school programs were permitted to continue. During this debate, Payzant stated that:

Growing up in the last 1940's and early 50's as a Boy Scout, I was taught the values of tolerance and inclusiveness and I find it rather ironic some 40 to 50 years later, that I am using what I learned as a Scout to challenge an organization that in the 1990's apparently doesn't understand that you can't have values in conflict and mixed signals to send * * * we can't tolerate an organization with that kind of policy working with young people.

Mr. President, the Boy Scouts of America have been an integral part of the American experience for more than 80 years, developing character, resourcefulness, and patriotism in more than 90 million young men. It is a voluntary, private association that has made membership and participation choices well within the American tradition while not relying on public funds. Just recently, a Federal court of appeals held that the Boy Scouts can retain their "duty to God" pledge and deny membership to those who refuse to take the oath. The court said civil rights laws do not apply because Boy Scouts is a private organization, not a "place of public accommodation." The Scouting movement deserves respect and support and is entitled at least to tolerance from those who disagree with it.

Like Roberta Achtenberg, Bill Clinton's choice for Assistant Secretary at the Department of Housing and Urban Development, Payzant seems to tolerate only those with whom he agrees. He brands as intolerant those who simply disagree with his agenda. Most troubling, he has used the power of his public office to pursue his agenda by forcing the Boy Scouts out of school during school hours.

That misuse of power, that narrow intolerance, disqualifies him from a position of far greater power to implement and enforce Federal education policy designed to create a more educated, open and tolerant society.

Regrettably, Dr. Payzant, Ms. Achtenberg, Dr. Hackney, and Ms. Guinier have failed what I call the Barnette test of tolerance. In 1943 the Supreme Court held, in *West Virginia Board of Education versus Barnette*, that it was unconstitutional to compel public school students to salute the flag. In that famous opinion rejecting the use of political power to impose a regime of religious intolerance, Justice Robert H. Jackson wrote:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

I cannot vote to confirm Dr. Payzant, or nominees to other offices, who do not meet that standard of fairness and tolerance of diversity, a standard at the heart of our American tradition.

The PRESIDING OFFICER. All time has therefore expired on this nomination.

The yeas and nays having been ordered. The vote will occur Tuesday, August 3, in accordance with the order of July 30.

The Chair recognizes the Senator from Pennsylvania, Mr. WOFFORD.

NOMINATION OF SHELDON HACKNEY OF PENNSYLVANIA TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Mr. WOFFORD. Mr. President, I rise now to ask unanimous consent that the Senate proceed to the nomination of Sheldon Hackney under a time agreement previously entered into. This request has been cleared by the minority.

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

The clerk will report the nomination.

The assistant legislative clerk read the nomination of Sheldon Hackney of Pennsylvania to be Chairperson of the National Endowment for the Humanities.

The PRESIDING OFFICER. Under the previous order, the debate on this nomination is limited to 5 hours, equally divided, and controlled between the Senator from Massachusetts, Mr. KENNEDY, or his designee and the Senator from Kansas, Mrs. KASSEBAUM, or her designee.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WOFFORD. Mr. President, I rise in strong support of the nomination of Sheldon Hackney to head the National Endowment for the Humanities. And I appreciate the Senator from Indiana noting his support, as was the case with all members of the Labor and Human Resources Committee.

Sheldon Hackney is a son of the South, but he is also an adopted son of Pennsylvania. We have seen him in action as the president of the University of Pennsylvania for the past 12 years as he has ably steered the university and helped build its reputation for excellence and scholarship. He has earned our respect, friendship, and support.

Sheldon Hackney is a distinguished scholar, writer, and teacher. As a historian of the South, he has received the Southern Historical Association's prize for best work in southern history and the Albert Beveridge Prize in American history. He has served with great distinction as the provost of Princeton University, the president of Tulane

University, and most recently, as president of the University of Pennsylvania.

In his 12 years at Penn, Dr. Hackney has forged much closer ties to the community, rebuilt and strengthened the undergraduate curriculum, and enhanced the university's role as one of the leading research institutions in the world.

The chairman of Penn's board of trustees, Alvin Shoemaker, recently said:

Penn's accomplishments since Sheldon's arrival in February 1981 are without parallel in higher education. He has clearly been one of Penn's greatest chief executives.

I ask unanimous consent that the citation for the honorary degree given this June to Sheldon Hackney be printed at this point in the RECORD, along with Mr. Shoemaker's letter.

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

[University of Pennsylvania, Philadelphia]

FRANCIS SHELDON HACKNEY

A prize-winning historian in the Progressive tradition, you honed your analytical skills—while learning to learn from history—in scholarly studies of the society and the defining myths of the South. In a succession of leadership roles at elite institutions, you invariably reached out to less privileged communities of learners, acting on a deeply-held belief that today's educator has responsibility to all of our children.

Arriving at the University of Pennsylvania from the presidency of Tulane, you set your imprimatur on the community—by setting up house in West Philadelphia, the first chief executive to live at the heart of campus since colonial times. Your cordial welcome to all groups is fabled—as is your hospitality to all points of view, your conviction that disagreement and dissent are the hallmark of a healthy university. A listener and a voice of moderation yourself, as Penn's 21st head, now practically the longest-lived president in the Ivy League, you "Planned Penn's Future"—and did not meet a student who wasn't having a terrific time. Overseeing a preeminent strategic planning process, a renewal of undergraduate education along with an expanding research base, and the work of conservation and development at the nation's most beautiful urban campus, as the University's endowment quadrupled you helped cultivate the world's most generous alumni and friends in an ambitious, highly successful Campaign. For over a decade, you dealt with the ambiguities and contentiousness of a huge, complex, diverse, multi-national university—and still found time to teach that other notable era, "The Decade of the Sixties."

As life, yet again, happens while you were planning something else, we will miss your exemplary civility, inclusivity and humor—if not always your Commencement movie reviews. Congratulating you on an outstanding watch at Penn, Sheldon Hackney—officer, gentleman, and both teacher and maker of history—with glee, and some sadness, we now turn the tables to confer on you a well-earned token of your university's appreciation, the honorary degree, Doctor of Laws.

Mr. WOFFORD. In a previous life, I spent 12 years as a college president. I know something of the challenges of heading a university, especially in a

time of sharp debate in a diverse and changing society. We are all aware that there has been some controversy at the University of Pennsylvania this spring. But I know from experience that hardly a season goes by without controversy on a college campus. Most college presidents are charged with being too liberal by some and too conservative by others, too interventionist by some, and too removed by others.

That is the life of a college president. So if absence of controversy is the standard for confirmation, then no college president need apply.

We have all heard—and undoubtedly will hear more—about two widely publicized cases on the Penn campus. In one case, Dr. Hackney was criticized for not intervening in the university's judicial process that clearly had gone awry. When I was a college president, I witnessed how these judicial procedures and codes were growing and longed for the days when a college president or dean could rely on the more traditional, direct techniques of calling students into their offices to immediately resolve problems.

According to the chairman of Penn's board of trustees:

One can debate whether Penn's student judicial procedures are effective or appropriate. But having established such a process, the university's president could not intervene in the middle of it.

And before leaving Penn, Sheldon Hackney initiated a comprehensive review of established guidelines and called for an end to the policy that inappropriately relied on judicial processes to resolve this type of incident on campus.

Questions have also been raised about an incident involving a group of students who confiscated an entire edition of the school's newspaper, the Daily Pennsylvanian. During his confirmation hearing before the Labor and Human Resources Committee, members of the committee, led by Senator ORRIN HATCH, asked thoughtful, constructive, probing questions. Sheldon Hackney responded in a forceful, clear, and direct way. The way he answered our questions and the way he took on the controversies at Penn convinced even the most skeptical members of the committee. Two of the members from the other side of the aisle indeed told me after the hearing that it was one of those rare occasions when they came in with their minds fixed, they thought, against him, and after the long, careful probing they had a chance to do, they changed their minds.

That is why every member of the Labor Committee, Democratic and Republican, liberal, moderate, and conservative, voted to confirm Sheldon Hackney. Every member. We might not each agree with every statement that was made or action that was taken at Penn, but we were all convinced that at no time did he compromise his com-

mitment to free speech or academic freedom. At the time of the incident, as in response to a question from Senator HATCH, Dr. Hackney made clear that free expression is the paramount value of the university.

I was proud that the Senate Labor Committee did not use this Presidential nomination to—now I am paraphrasing Senator DANFORTH's remarks, which I will return to later, " * * * make a political point or further a philosophical position to establish our own moral superiority or to embarrass a President. The American people are tired of that politically lucrative form of divisiveness." But others feel it is perfectly fair to condense a career of over 30 years into a couple of well-publicized incidents. Nominees are used as pawns by extremist groups to advance their own political agendas.

Citizens United, a group that brought us the infamous Willie Horton ads of 1988, is now leading the charge against Sheldon Hackney. Not known for their support of or interest in the humanities, as far as I know, Citizens United is now portraying itself as the protector of first amendment rights. Their real goal was made clear by the group's political director, David Bossie, who said: "Free speech is not our main focus. Our goal was and is to defeat Bill Clinton."

The now routine practice of trashing political appointees was described by Senator DANFORTH. Writing in the Washington Post, Senator DANFORTH said:

Why risk the reputation you worked so hard to earn by subjecting yourself to what can become of Presidential nominees? All that you worked a lifetime to build can be wiped out in the months that will pass between your nomination and the confirmation that may or may not follow. * * *

The real issue is whether there are any limits as to how far we can go in using a presidential nomination for purpose of making a political point or furthering a philosophical position or establishing our own moral superiority or embarrassing the President of the United States, whatever party may at the time occupy the White House.

Today, there are no such limits, and no limits will or should be supplied by rule of law. If there is to be some minimum standards of decency we accord Presidential nominees, it will arise from an expression of disgust by the American people for what we are doing to nominees who previously have lived exemplary lives, and that disgust will reflect our sense that those who have been nominated are more than stand-ins for political positions; they are human beings. Until that recognition dawns upon us, my advice is, if the President calls, just say no.

I ask unanimous consent that Senator DANFORTH's article be printed in the RECORD.

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

[From the Washington Post, June 25, 1993]

A PRESIDENTIAL NOMINATION? FORGET IT

(By John C. Danforth)

If the president calls to say that he will nominate you for a job subject to confirmation by the Senate, just say no.

The president's call should be a cause of great personal satisfaction. Presidents don't offer nominations to just anyone. That he has offered you an important position in his administration shows that a lifetime of hard work has paid off. Your achievements are known even to the president of the United States. Thank the president profusely for the honor. Then just say no.

Why risk the reputation you have worked so hard to earn by subjecting yourself to what can become of presidential nominees? All that you have worked a lifetime to build can be wiped out in the months that will pass between your nomination and the confirmation that may or may not follow.

First you will submit to the administration details about the most intimate aspects of your life. Have you ever smoked dope? How about your sex life? What clubs do you belong to? Often, if officials in the administration feel that you are not an obvious embarrassment, your files will be turned over to the FBI for a background check. That means that the FBI will make house calls on at least three-dozen of your neighbors, friends and business associates.

What the FBI uncovers is supposed to be confidential. Don't count on it. Your file will be reviewed by the administration and then by at least one member of each party in the Senate. College-age drug use, while generally not a cause of disqualification, may be leaked to the media to the humiliation of you and your family. The fact that public disclosure of FBI files is a violation of both federal law and Senate rules should be of no comfort to you. Determined opponents are not deterred if leaking information will serve the purpose of defeating a nomination. Media recipients of the leak will claim the highest principle of their trade when they protect the leaker.

The carnage of presidential nominations now litters the landscape of Washington. Hiring illegal aliens, whether or not it violated the law, now is grounds for withdrawal of a nomination. So is failure to file Social Security tax returns for babysitters. A request for a deposition by the Securities and Exchange Commission can end a nomination, as can provocative law review articles written by a professor. And, in the * * * of an assistant secretary of Housing and Urban Development, the nominee's sex life, while not sufficient to cause her defeat, became the subject of a nationwide telephone campaign.

This trashing of presidential nominees is not done in private. It is not a matter of something coming up quietly that suggests the nominee is unfit for the job at hand. Rather, the whole episode is played out on the front pages of the daily press and at the top of the evening news. Forevermore, the esteemed jurist will be known as the person with the illegal babysitter, and the writer of scholarly articles will be known as a Quota Queen.

The next controversial nominee will be Sheldon Hackney, the president's choice to chair the National Endowment for the Humanities. Hackney is under fire for his "politically correct" handling of various racial controversies during his presidency of the University of Pennsylvania.

One would hope that university campuses would be centers of civil discourse, where racial and ethnic groups live in harmony. But,

alas, that is not always the case. Young people, eager to try out the new experience of freedom from parental control, test the limits of the university's commitment to free speech. The result is speech that is intentionally outrageous and offensive. Meanwhile, members of minority groups, sensitive to insults, challenge the school's administration to prove its commitment to respecting minority rights.

It is a difficult challenge for university administrators to keep the peace on campuses where uproar is more the rule than the exception. Some administrators do the job better than others. Some seem too ready to appease one group or another in the name of preserving campus order. A case can be made that Hackney went too far in his efforts to placate outraged black students and that free expression suffered.

But what is the point in raising this issue in the context of Hackney's nomination? He is not being considered for a new position in university administration, and his ability to deal with campus crises seems irrelevant to the job of chairing the NEH. The president has chosen this man to implement the administration's policies. The president will be accountable for his performance in office. The mission of the NEH is to "promote progress in the humanities" by making grants to individuals, institutions and organizations. Surely Hackney's background as a distinguished scholar, author and teacher qualifies him for this work.

The attack on Hackney for his management of the University of Pennsylvania, while unrelated to the mission of the NEH, is directly related to the politically lucrative field of racial and ethnic divisiveness. If the racial turmoil of a university campus can be transported to Washington, the political benefits are enormous.

The real issue is whether there are any limits to how far we can go in using a presidential nomination for the purpose of making a political point, or furthering a philosophical position, or establishing our own moral superiority or embarrassing the president of the United States, whatever party may at the time occupy the White House.

Today there are no such limits, and no limits will or should be supplied by rule or law. If there is to be some minimum standard of decency we accord presidential nominees, it will arise from an expression of disgust by the American people for what we are doing to nominees who previously have lived exemplary lives. And that disgust will reflect our sense that those who have been nominated are more than stand-ins for political positions. They are human beings.

Until that recognition dawns upon us, my advice is: If the president calls, just say no.

Mr. WOFFORD. Mr. President, I am glad that Sheldon Hackney did not say "no" when the President asked him to take this challenging assignment.

During the confirmation hearing, we saw the real Sheldon Hackney, not the caricature that so many have tried to draw. We saw a man of accomplishment as a scholar and administrator at the University of Pennsylvania, Princeton, and Tulane. We heard a man who understands how the humanities can transform lives. And I ask unanimous consent that the full statement of Sheldon Hackney before our committee be put in the RECORD by unanimous consent at this point.

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

STATEMENT OF SHELDON HACKNEY, NOMINEE FOR THE POSITION OF CHAIRMAN, NATIONAL ENDOWMENT FOR THE HUMANITIES, JUNE 25, 1993

At first glance, my life does not appear to be one that was ever in need of transformation, yet I can bear personal witness to the sort of personal transformation that I believe the humanities have the power to accomplish.

I was born and raised in Birmingham, Alabama, the third son of a thoroughly Methodist family that eventually included five sons, the offspring of a marriage that is now in its sixty-fourth year. My childhood was spent in the Great Depression and World War II, and I was acutely aware that my world was one of scarcity and vulnerability. Nevertheless, my childhood was unproblematic, at least if one doesn't count my being continuously terrorized by my older brothers.

My father was a newspaperman before the war. As that was not the era of the journalist as hero, and as his family was large, when he returned from the Navy he set himself up in business buying and reselling war surplus material. His business evolved, and he eventually did very well.

As I went through public school in Birmingham, like most children of middle-income families, I could imagine various futures for myself, each of them honorable and productive, but I never imagined the life I have actually had. That life was opened up for me in part because of two superb History teachers at Ramsay High School, Mary McPhaul and Ellen Callen, and in part because I loved to read. My mother read to us a lot when we were young, and when I was a bit older I remember listening wondrously to her practicing the dramatic book readings that she did for literary clubs around the city, legitimate theater not having a very lively presence in Birmingham then. Although reading was a bit of magic for me, I was thoroughly imprisoned in the myth that real boys did not work very hard in school and real men were men of action rather than thought.

The major reason, however, that the world was saved from having yet another lawyer was my older brother, Fain, whom I worshipped. He was charismatic and multi-talented and very imaginative, so that he was always the leader in the neighborhood and the one who would organize our play, not only the standard games like kick-the-can and hide-and-seek, but elaborate war games and a game we called "town" in which everyone had a role selling something, and Fain was always the banker because he could draw so well and make beautiful dollar bills. My brother, Morris, always got the lemonade concession and ended up with all the money that Fain had issued from the bank.

Fain was a young man of grandiose projects, usually too grand ever to finish but always exciting enough to draw in everyone else. Despite all his talent, he had an uneven academic record, reflecting his enthusiasms and his lack of focus, but he had a great time and made all those around him have a great time also. He went off to the University of Alabama where parties were then known to occur. He had a wonderful time his freshman year, and his abysmal grades showed it.

Something happened to him that following summer, and I don't know what the transforming event or experience was. In any case, he became a different person. He started reading books that were not required for school. He began to listen to classical music, to write poetry, and to talk of serious subjects. He transferred to Birmingham Southern College and started to work at his courses. I was fascinated.

Part of his plan for remarking his life was to become a Navy pilot, which he did. When I went off to Vanderbilt on a Naval ROTC scholarship, he was on the West Coast and then in Japan flying amphibious patrol planes. Letters from him were not only reports of adventures in exotic places but accounts of what he was reading and thinking and guilt-producing questions about my intellectual life, which even at Vanderbilt could be as sparse as one wanted it to be.

It was at about this time, because of Fain's example, if not his specific recommendation, that I was captured by the novels of William Faulkner, Ernest Hemingway, and especially Thomas Wolfe. I am almost embarrassed to remember how much I identified with Eugene Gant, a young Southerner coming of age by trying to read his way through the Harvard library. Vanderbilt was saturated, of course, with the tradition of the Fugitive poets and the Agrarians, and I studied them with appreciation. Though the Agrarians had taken their stand twenty years before in very different times and had since then taken diverse political paths, the big questions they had raised (about what is the good life, and what is the value of tradition, and what is the function of government, and what are the perils of modernity) were common and lively topics of debate among my friends.

We also talked of race relations, an omnipresent concern of Southerners black and white that was intensified by the Supreme Court's ruling in the Brown case that put an exclamation mark in the middle of my college years. For reasons that I find difficult to explain, but that probably have to do with my religious training, I had broken away from southern white orthodoxy even before going to college and had concluded that racial segregation was wrong. As a historian, I have continued my interest in race because it is a major factor in American history. As an individual, I have continued my commitment to racial equality because I believe it is right and that group relationships are one of the major unresolved questions on the domestic scene. In the more formal curriculum at Vanderbilt, Dewey Grantham, Herb Baily and Henry Swint in the History Department increased my interest in History.

I was devastated by the death of my brother in a military plane crash in Japan in 1954 during the summer after my sophomore year. He had meant so many things to me that it was not until years later that I realized that his most important gift to me was to give me permission to use my mind in serious ways, to risk pursuing a subject that I enjoyed, to spend my life in pursuit of education for myself and for others. Watching him change, and being lured into the pleasures of thought as a way of enhancing experience, transformed my life and gave it purpose.

After three years on a destroyer and two years teaching weapons at the United States Naval Academy in Annapolis, I went to Yale to study under C. Vann Woodward, the leading historian of the South and the man who became the most important influence on my career as a historian and on my devotion to academic freedom, intellectual honesty, free speech, and the obligations of collegiality. I had been attracted to Woodward not only by his reinterpretation of the history of the South from Reconstruction to World War I, but by his subtle exploration, in the essays collected in *The Burden of Southern History*, of what it means to be a Southerner and what the history of the South means to the nation and the world.

After Yale, I joined the faculty of Princeton where I worked away at becoming the best teacher and scholar I could possibly be while raising a family and doing the sort of committee assignments and quasi-administrative tasks that faculty are called upon to do. My career as a historian, fact, was diverted because I kept saying yes to such requests. When William G. Bowen became President of Princeton in 1972, he invited me to become Provost. The slippery slope turned into a water chute. I became President of Tulane University in 1975 and the University of Pennsylvania in 1981. This confirms the truth of the aphorism that life is what happens to you while you are planning something else.

I believe my twenty years of major responsibility in universities has prepared me to lead the National Endowment for the Humanities. For the past generation, universities have provided tough environments. University presidents operate in a sea of powerful and conflicting currents. To succeed, one must have a clear sense of strategic direction, a fundamental commitment to the core values of the University, the strength to persevere through contentious times, and the ability to gain and keep the support of a variety of constituencies. I have not only survived in that environment, I have proposed, and my institutions have thrived.

Among the values that I hold dear is a belief that a university ought to be open to all points of view, even if some of those views expressed are personally abhorrent. I take some pride in having protected the right to speak of such diverse controversial figures as Robert Shockley at Princeton, King Hussein of Jordan at Tulane, and Louis Farrakhan at Penn. The university should belong to all of its members and not be the exclusive domain of any particular person, group, or point of view.

During my twelve and a half years at Penn, I have made the undergraduate experience my highest priority. Penn has revamped the general education components of the curriculum in each of its four undergraduate schools, provided a livelier sense of community through the creation of freshman houses within the residential system, added a reading project that asks freshmen to read a common book and then to discuss that book in seminars during orientation week and throughout the year, revised our advising system, revitalized the freshman seminar program, and drawn senior faculty into the teaching of introductory courses. I have increased the diversity of the Penn student body and worked hard to sustain an inclusive and supportive atmosphere on campus, to provide a campus in which everyone has a very strong sense of belonging and in which our animated debates are carried out with civility. I have also created a new sense of partnership with the neighborhoods around us, as a close working relationship with the school system of the City of Philadelphia, and a national model program of volunteerism that I institutionalized a year ago by establishing the Center for Community Partnerships to stimulate and coordinate the involvement of faculty, staff and students in off-campus service activities.

Universities exist to create new knowledge and to preserve and communicate knowledge. The NEH, as a sort of university without walls, through its research, education, and public programs, is engaged in the same effort. I am dedicated to the proposition that we can improve the human condition through knowledge and that our hope for to-

morrow in this troubled world depends on the sort of understanding that can come through learning.

I have great respect for the NEH. It is the single most important institution in American life promoting the humanities, and it has a long record of accomplishment. I believe there are things that can be done to extend and broaden the impact of the NEH as it fulfills its statutory task of stimulating the humanities.

I like to think of the humanities as human beings recording and thinking about human experience and the human condition, preserving the best of the past and deriving new insights in the present. One of the things that the NEH can do is to conduct a national conversation around the big questions: what is the meaning of life, what is a just society, what is the nature of duty, and so on. In this big conversation, it is not the function of the NEH to provide answers but to insure a discussion, to create a forum in which all voices can be heard.

Because they are not just for the few but for everyone, no single approach to the NEH mandate is adequate. There is a need for balance among research aimed at creating new knowledge, educational programs to insure that the humanities are creatively and invitingly represented in the curricula of our schools and colleges, and public programs to draw everyone into the big conversation. Those three activities should be related to each other and should be mutually supportive.

The country has never needed the humanities more. We not only face the challenges of a new geopolitical situation and the problems of adjusting to economic competition in a new global marketplace, but we face a crisis of values at home. What is happening to family and community? Who are we as a nation and where are we going? What holds us together as a nation and what do citizens owe to each other? What is the relationship of the individual to the group in a society whose political order is based upon individual rights and in which group membership is still a powerful social influence.

Even more importantly, the humanities have the capacity to deepen and extend to new dimensions the meaning of life for each and everyone of us. They have the capacity to transform individual lives, not necessarily in the external circumstances of those lives, but in their internal meaning.

Every human experience is enhanced by higher levels of knowledge. When I listen to a piece of music, I may like it and think it beautiful, but the person who knows the historical context of its composition understands what the composer was trying to accomplish technically and can compare the composition and the performance to others will get infinitely more out of the experience than I will. That is why I enjoy talking about common experiences with people who will see it through a lens different from mine. The task of the NEH is to enrich the conversation and bring more people into it.

The premise of my approach to the tasks of the National Endowment for the Humanities is simple but profound. The more you know, the more you hear and see and feel. The more you know, the more you can know. The more you know, the more meaningful life is. Such can be the gift of the NEH to the American people.

Mrs. BOXER assumed the Chair.

Mr. WOFFORD, Madam President, I find it hard to believe anyone can read that full statement without being moved as members of the committee

were. We heard a man of strong clear convictions.

Madam President, I have known Sheldon Hackney for many years now. He is thoughtful, quiet, careful. But do not for 1 minute underestimate the strength and leadership that underlies these traits. He is steady, strong, and wise. It is these characteristics that the Labor Committee saw and heard, and it is these characteristics that will make Sheldon Hackney an outstanding chair of the National Endowment for the Humanities.

In considering Sheldon Hackney's nomination, the Labor and Human Resources Committee lived up to its tradition of fairness and bipartisanship in unanimously recommending this nomination. I hope that the full Senate will act in that same spirit and that the better angels of our nature, as Lincoln hoped, will rise to the occasion again today.

I urge my colleagues to support this nomination.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Madam President, all of us are aware of what George Bush called "the political correctness thing." It is a thing, all right, but when one examines it closely, including the cause-and-effect aspects of it, political correctness is—as someone has noted—a radical philosophy which despises, and seeks to rewrite, the history of our Nation and Western civilization.

It has the unmistakable appearance of advocating that rights and benefits be awarded and distributed on the basis of group identity and not on individual merit.

Madam President, if you pause to think about it, it becomes clear that the adherents of political correctness somehow almost always challenge any dissent from their beliefs. And they do it with what has been described as group intimidation, forced re-education or official censure.

Which gets me around to the problem with Sheldon Hackney, the nominee for Chairman of the NEH; Mr. Hackney's problem is that he is recognized as one of the most prominent apologists for political correctness.

Which may be exactly what President Clinton wants as his Chairman of the National Endowment for the Humanities; it may be what every other Senator is willing to accept; but this Senator simply cannot, in good faith, support Dr. Hackney's nomination based on the record. I bear him no personal animus, but I cannot be a party to confirming his nomination.

It is both interesting and instructive that Dr. Hackney has run into opposition from such disparate voices as the Wall Street Journal, Charles Krauthammer and Richard Cohen of

the Washington Post, Nat Hentoff of the Village Voice, George Will, and the Washington Times. All of these, and many others, have declared that Dr. Hackney is the wrong choice to head the National Endowment for the Humanities [NEH].

Charles Krauthammer may have put it best when he said and I quote him directly:

Sheldon Hackney * * * is, unfortunately, a perfect example of the failure of nerve—the failure of intellectual honesty, the failure to defend principle—that is the shame of American academic leadership. To elevate Hackney to the Chairmanship of the National Endowment is to endorse those failures

Madam President, one is obliged to wonder if President Clinton was aware of these failures when he submitted Dr. Hackney's name to the Senate.

For example, Dr. Hackney supported an effort to prohibit the ROTC—the Reserve Officer Training Corps—from operating at the University of Pennsylvania because, guess why, the military refuses to permit open homosexuals to serve in the Armed Forces.

Also, Senators may have heard of the student at Penn who in frustration referred to a rowdy group of black sorority women as "water buffalo" when the commotion they were making outside his dormitory interrupted his studies. Even though water buffalo is not now, and has never been, a racial slur, the student was prosecuted for having made a racially offensive statement under the speech code at Dr. Hackney's university. Come on. What phony baloney—and Dr. Hackney was a part of it.

In 1985, a popular instructor at the University of Pennsylvania was forced to apologize and undergo a sensitivity and racial awareness session after a group of minority students objected to his reference in class to himself, blacks and Jews as ex-slaves, even though the teacher is himself Jewish.

And just a few months ago, Dr. Hackney defended the actions of a group of minority students at his university who stole 14,000 copies—almost the entire run—of the campus newspaper because they disagreed with an editorial in that edition of the paper. Dr. Hackney saw nothing wrong with that. Many others see a whole lot wrong with it.

Mr. President, I will ask unanimous consent that a more detailed discussion of these events—all of which occurred during Dr. Hackney's tenure at Penn—be printed in the RECORD at the conclusion of my remarks.

Madam President, this is the same Sheldon Hackney who so vigorously defended the alleged right of the National Endowment for the Arts to use taxpayer funds to pay for sickening obscenity parading under the false flag of "art."

I am putting quotation marks around "art" because it is not art. It is pornography.

For example, Dr. Hackney wrote the following, and I regard it as nonsense, in the September 1989 issue of the Chronicle of Higher Education: He wrote:

The issue is not whether Mr. Mapplethorpe's images are pornographic or Mr. Serrano's sacrilegious, or about whether their work is art or whether they are artists.

I say paranthetically, to heck it is not the issue. It is exactly the issue when you are expending public funds for anything.

Dr. Hackney continued, I quote:

The question is whether our government, having decided to support the arts, should be involved in attempting to suppress certain forms of expression in an attempt to cleanse public discourse of offensive material.

Then he goes on to say:

Some people or groups will be offended from time to time but * * * the price of excellence—

An interesting choice of words, I might add, but let me finish the quote: and the price of a vibrant artistic scene is the risk of occasional offense to someone's sense of what is appropriate to display or say in public.

But let us compare this statement, Madam President, with what Dr. Hackney wrote less than 10 months later, because Dr. Hackney is not even consistent. Note what he had to say in the July 1990 issue of *Academe* magazine in defense of his university's so-called hate speech code prohibiting all speech that "creates an offensive living or work environment." He tries to have it both ways. Dr. Hackney wrote:

My own judgment is that we should be able to define racial harassment in such a tight way, perhaps as words uttered in a face-to-face encounter that are intended to inflict emotional damage, that we will be able to outlaw verbal terrorism without chilling the open expression of ideas.

If ever there was a convoluted, back-filling statement on an issue of philosophy, that is it. He cannot have it both ways, but frankly a lot of people are letting him have it both ways including, I am sad to say, the members of the Labor Committee that conducted his nomination hearings.

That Madam President, is an example of Dr. Hackney's convoluted double standards. According to Dr. Hackney, Congress is and should be prohibited from imposing any restriction on the content of offensive art or speech paid for by the taxpayers, but the University of Pennsylvania and Dr. Hackney can punish and censor any student or professor for speaking freely—in cases where no taxpayer money is involved—if Dr. Hackney and his associates happen not to approve of the speech.

Dr. Hackney's "free speech for me, but not for thee" double standard would be amusing if it were not for President Clinton's efforts to grant Dr. Hackney the power to make a significant impact on this Nation's culture.

I recall, Madam President, about 10 years ago a fellow named Bill Bennett

came to Washington to become Chairman of the NEH. This was prior to his later becoming Secretary of Education. One of Bill Bennett's great contributions to the NEH was his infusing the agency with the courage to stand up to the smug bureaucrats and their acolytes in academia who, until then, had pretty much dictated who and what was favored in the disbursement of NEH funds.

Madam President, the problem is that, once confirmed, Dr. Hackney will undo the good Bill Bennett achieved at the NEH. Dr. Hackney's record gives fair warning that that will be the case, and that is reason enough for this Senator to oppose his nomination.

I do not like to vote against him. I know he is a fine man and all the rest of it, but his record goes against him.

Perhaps the Wall Street Journal said it best in its editorial on June 25 when the Journal's editors wrote:

Simply put, the question before Senators is whether a university president who has compiled so sorry a record of appeasement in line with the prevailing political winds as Mr. Hackney has, should sit at the helm of the National Endowment for the Humanities, disbursing huge sums of taxpayer money in the form of grants. Imbuing NEH, that is, with the ethos of the American campus today.

If Senators had any real concern for the message the confirmation of Mr. Hackney would send about university free speech and the importance of choosing leaders to defend it, they would vote no on his confirmation.

Madam President, before Dr. Sheldon Hackney is granted the power to influence and shape our Nation's culture as Chairman of the National Endowment for the Humanities, let us take a closer look at his record as president of the University of Pennsylvania and the events I have already alluded to that occurred during his tenure.

(1) THE "WATER BUFFALO" CASE

This past January an Orthodox Jewish student at Penn—Eden Jacobowitz—called a rowdy group of black sorority women water buffalo when the commotion they were making outside his dormitory window made it impossible for him to study.

Young Mr. Jacobowitz was immediately charged with making a racially offensive statement under Penn's hate speech code. Even after anthropologists and others were willing to testify that the term "water buffalo" is not now—and never has been—a recognized racial slur, the university's judicial officer still ruthlessly pursued the case—even asking Jacobowitz if he had been thinking racist thoughts at the time.

She did offer him a deal, however. If he would: First, allow the University to permanently label him a racist on his college transcript; and second, undergo sensitivity training, then she would allow him to remain a student at Penn. Some deal.

Eden Jacobowitz understandably refused being branded a racist for life

without even a hearing on the merits. Hooray for him. He knows the difference between right and wrong and has the courage to stand by those convictions, unlike Sheldon Hackney, who refused to intervene on behalf of common sense and fairness—even after the university's prosecution of Mr. Jacobowitz became patently absurd.

As the Wall Street Journal pointed out, only after a "national outpouring of scorn and mockery for the university's obvious loss of prudence, adult judgment, and common sense * * * did Mr. Hackney conclude that the university's legal machinery, designed to punish offensive speech, needed overhauling."

(2) HOMOSEXUALS FIRST, AMERICA'S SECURITY SECOND

Dr. Hackney recently spoke out in favor of the homosexual community's efforts to kick the ROTC off the University of Pennsylvania campus because the military refuses to allow open homosexuals to serve in the Armed Forces. By supporting this campaign, Dr. Hackney demonstrated a callous disregard for the students at his university who want to serve their country by joining ROTC.

(3) THE EX-SLAVE COMMENT

In 1985, a popular instructor at Penn, Murray Dolfman, was forced to apologize and undergo a sensitivity and racial awareness session in order to keep his job. His offense: the previous fall he had offended four black students by referring—as he had for years—to himself, blacks and Jews as ex-slaves. Mr. Dolfman, who is himself Jewish, made this reference in an effort to make the class discussion about the 13th amendment's prohibition on slavery more pointed.

Several times during the months following his comments, Mr. Dolfman had his classes interrupted by protesting students. Dr. Hackney did nothing to stop the interruptions and instead acquiesced in Mr. Dolfman being harranged and punished by Dr. Hackney's subordinates at the university.

(4) THE CAMPUS NEWSPAPER CASE

Shortly after the water buffalo Dr. Hackney's staff at the university refused to punish or even reprimand these students for stealing and destroying the newspapers. Incredibly, the only person university authorities charged with any infraction in the incident was the library security guard—for trying to stop the minority students from stealing the papers.

Dr. Hackney downplayed this blatant theft, destruction of property and denial of the first amendment rights of the students who had written the newspaper. He dismissed the theft of the newspapers as a protest activity and stated that "two university values, diversity and open expression stand in conflict * * * we must work to narrow the distance * * * precluding their peaceful coexistence."

Claptrap, Madam President. I rarely agree with liberal Washington Post columnist Richard Cohen, but he hit the nail on the head about this gutless moral equivocating by Dr. Hackney when he wrote:

Hackney's refusal to vigorously condemn the seizure of the paper and to punish the offending students creates an insurmountable hurdle to his nomination.

Madam President, these are a few of the events cited by the varied voices opposing Dr. Hackney's nomination. So that Senators may have a more complete picture of Dr. Hackney than has been presented by his supporters, I ask unanimous consent that the following articles be inserted in the RECORD at the conclusion of my remarks.

First, the June 25, June 9, and April 26, 1993, editorials on Sheldon Hackney's nomination from the Wall Street Journal, respectively titled, "Mr. Hackney's Nomination," "The Other Guiniers," and "Buffaloes at Penn."

Second, Charles Krauthammer's June 25, 1993, column in the Washington Post titled, "Spineless at Penn."

Third, Richard Cohen's July 6, 1993, column in the Washington Post titled, "Sheldon Hackney's Dangerous Balance."

Fourth, Nat Hentoff's May 4, 1993, column in the Village Voice titled, "Civil Wars on Campus."

Fifth, George Will's April 29, 1993 column in the Charlotte Observer titled, "The PC Nominee: Clinton's choice for endowment sacrifices freedom of expression to political correctness."

Sixth, the May 2, 1993 Washington Post editorial titled, "Speech Code Siliness."

Seventh, the June 25, 1993, Washington Times editorial titled, "Sheldon Hackney's Turn."

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

[From the Wall Street Journal, June 25, 1993]

MR. HACKNEY'S NOMINATION

The Senator's sitting at the hearings—to begin this morning—on President Clinton's nominee for head of the National Endowment for the Humanities can be certain, of at least one thing. They will not be toiling in obscurity. Thanks to recent notorious events at the University of Pennsylvania, led until recently by President Sheldon Hackney, the Senate Labor and Human Resources Committee's deliberations over Mr. Hackney's nomination will have, to say the least, an attentive national audience.

It's hardly necessary by now to explain why. Mr. Hackney is the university head who presided over the world-famous water buffalo case, which saw a Penn freshman charged with "racial harassment" and Penn's administration in full cry, pressing the case. They did this, Mr. Hackney told us early on, because the administration had to "abide by the procedures that are in place." Moreover, he went on, those procedures were in his view "just and fair."

He has evidently since changed his mind, in light of the national outpouring of scorn and mockery that greeted the university's obvious loss of prudence, adult judgment or

common sense. Only after the publicity—and after the sorority women dropped their charges—did Mr. Hackney conclude that the university's legal machinery, designed to punish "offensive" speech, needed overhauling.

No overhauling can fix what is wrong with university harassment codes, which deserve to be consigned to oblivion along with their bizarre "legal" machinery. But more to the point, those codes and their machinery did not come out of thin air. They were produced by compliant university administrators cut from the same fine cloth as Sheldon Hackney, who end up arguing that they have no choice but to follow the "procedures." Over the past decade, obliging administrators brought those procedures and "solutions" into being in order to appease the grievances of activist students and professors. The administrators wrought what they no doubt believed to be considered rules and guidelines for the punishment of "offensive" speech and the maintenance of "civility"—and the cadres of the politically correct ran with them.

Empowered thus by administrators, and imbued with a chronic sense of victimization, the campus activists commenced to do what activists are most interested in doing—which is to act. Confronted with the resulting tide of absurd accusations and prosecutions over "insensitive" or "harassing" language, university administrators retreat, as Mr. Hackney has repeatedly done, into right-minded meditations on the importance of civility and free expression. Talk, as they say, is cheap.

The Senators at today's hearings might begin by asking some hard questions about Mr. Hackney's response to the seizure, by a group of minority activists, of an entire press run of the Penn student paper, the Daily Pennsylvanian. It would tell them volumes about the candidate's ability to act in defense of free speech, as opposed to his ability to form eloquent meditations on the subject.

Mr. Hackney and friends have spent considerable time in recent weeks complaining that "conservatives" have distorted his views and that he roundly condemned the taking of the papers. What Mr. Hackney in fact did after the theft was to issue a statement awash in pious evenhandedness, which repeatedly exculpated the seizure of the papers as "a protest activity."

A note from CBS's Mike Wallace, published in our letters column last week, chides us for judging Mr. Hackney by his mistakes and adds: "he has inevitably fumbled. Who hasn't?" We were deeply moved by Mr. Wallace's solicitousness on behalf of those who make mistakes, and wait with interest to see whether his concern for fairness might one day be extended to the public figures mercilessly flayed and garroted on "60 Minutes" every week.

Like Mr. Wallace, other supporters of Mr. Hackney attest again and again to his civility and sensitivity. These are stellar virtues indeed. But perhaps there is something in the air breathed around university buildings that disconnects them utterly from the virtues of courage and leadership.

Mr. Hackney's mishandling of the water buffalo affair and newspaper thefts is bad enough. But the much more insidious problem with the Sheldon Hackneys of American university life, and their number is legion, is that instead of courage, we must listen to their casuistry about "tolerance"; instead of leadership, we must bear their silent complicity in the suppression of honest opinion.

We all know about Eden Jacobowitz; we'll never know how many professors or students

gag words and opinions down their throats now, lest some 19-year-old authoritarian call out the disciplinary machinery, cheerleading faculty and TV cameras—while the school's president draws the blinds to let "the procedures" grind forward.

When Penn scholar Murray Dolfman—accused of a ludicrous charge of racism for trying to bring home the significance of the 13th Amendment—had his classroom invaded by "protesters," President Hackney had not a word to say in defense of Mr. Dolfman's academic freedom, nor was he moved to discipline the disrupters. On the contrary, it was Mr. Dolfman whom "the procedures" forced to make a public apology and to attend a "sensitivity" training class.

Simply put, the question before the Senators is whether a university president who has compiled so sorry a record of appeasement in line with the prevailing political winds as Mr. Hackney has, should sit at the helm of the National Endowment for the Humanities, disbursing huge sums of taxpayer money in the form of grants. Imbuing NEH, that is, with the ethos of the American campus today.

If the Senators had any real concern for the message the confirmation of Mr. Hackney would send about university free speech and the importance of choosing leaders actually willing to defend it, they would vote no on his nomination. As it is, this Democratic nominee will be voted upon by Democrats Ted Kennedy, Claiborne Pell, Howard Metzenbaum, Chris Dodd, Paul Simon, Tom Harkin, Barbara Mikulski, Jeff Bingaman, Paul Wellstone and Harris Wofford. We hope all those self-gagged professors who think their beliefs and interests are tied to Democratic politics will attend to the content and outcome of today's hearing.

[From the Wall Street Journal, June 9, 1993]

THE OTHER GUINIERS

Though President Clinton has cut his losses with Lani Guinier, the lingering question is why she was ever appointed. What does it say about a White House appointment process when a President himself has to read law review articles before anyone notices a problem?

That question seems especially apt because of two other widely rumored Clinton nominees who could be this President's next confirmation headaches. Word is that Sheldon Hackney will get the nod at the National Endowment for the Humanities (NEH), while Stanley Katz will run the National Archives. Their appointment would identify Mr. Clinton with the academic elites who have made "political correctness" the dominant ethic on American campuses.

Mr. Hackney is by now well known as the president of Penn who tried to prosecute a freshman for shouting "water buffalo" at some raucous black women. This was deemed a crime against "diversity." Only after near-universal uproar and ridicule in the press (here and abroad) did Mr. Hackney drop the prosecution.

But in fact, Mr. Hackney's correctness campaign is long-running. In 1991 he spoke out in favor of kicking ROTC from Penn unless the military began to admit openly gay men and lesbians. And Mr. Hackney saw only a "conflict" between "diversity and open expression" when some Penn students stole 13,000 copies of a student newspaper they found offensive.

Nat Hentoff, the liberal columnist, has written about a Penn lecturer, Murray Dolfman, who was forced to apologize and undergo a "sensitivity and racial awareness"

session a few years back. Mr. Dolfman's sin? He had tried to make his popular lectures on the 13th amendment more pointed by referring to blacks and Jews (referring to ancient Egypt) as "ex-slaves."

On the other hand, Mr. Hackney was quick to denounce Jesse Helms for his attacks on federal subsidies for "PissChrist" and other "art." The "best protection we have found for a democracy is an unregulated market in expression," he wrote at the time, apparently without irony. Mr. Hackney's double standard suggests a man who'd dispense federal arts money according to a similar bias.

As for Mr. Katz, he was a lead prosecutor in the celebrated 1991 campaign against Carol Iannone's nomination to the advisory board of the NEH. As president of something called the American Council of Learned Societies (CLS), Mr. Katz ginned up a letter campaign to Democratic senators, who defeated her as somehow unqualified. But her real sin, as Democratic Senator Daniel Patrick Moynihan pointed out in defending Ms. Iannone, was that she had attacked "political correctness" in articles in Commentary magazine.

The learned Mr. Katz then fired off a letter so amazing that Mr. Moynihan had it placed in the Congressional Record. "ACLS is the largest humanities organization in the world," Mr. Katz wrote to his home state Senator. "Might it not have been a good idea for someone on your staff to inquire into our reasons for opposing Iannone? Or don't you care what we think? Or why we think it? I am simply appalled that a fellow Democrat, intellectual and academic should resort to such scandalous and irresponsible imputation of bad motives. What should I make of your own?"

Mr. Moynihan must now be wondering what he should make of a White House that would nominate someone who had so insulted the chairman of the Senate Finance Committee. Were Mr. Clinton's personnel aides all asleep during the Iannone fight? Did they bother even to clear their choice with the Senator they need more than any other to pass the wobbly Clinton tax program?

The Katz choice would suggest a White House arrogance that borders on the delusional. At least the Hackney nomination is attributable to personal ties, since Mr. Hackney's wife served on the board of the Children's Defense Fund with Hillary Clinton. But this is the same Hillary Clinton who recently gave a fine speech at Penn deploring political correctness. She could prove this was more than rhetoric by asking her husband to drop the Hackney nomination.

The bigger point here is that Mr. Clinton needs a personnel process that can somehow avoid such potential disasters. Instead he has aides who think Lani Guinier and Sheldon Hackney are in the mainstream. It's a mystery to us that Al From of the centrist Democratic Leadership Council is writing op-eds in the New York Times instead of flagging these potential disasters from inside the White House. Without such advice, the President will only suffer more Lani Guiniers.

[From the Wall Street Journal, Apr. 26, 1993]

BUFFALOED AT PENN

A freshman, the latest victim of the ideological fever known as political correctness, goes on trial at the University of Pennsylvania today. It's not irrelevant to note that the head of this institution, Sheldon Hackney, is President Clinton's nominee to head the National Endowment for the Humanities—and a man, university spokesmen insist, committed to free speech. That's reassuring to

know, especially in light of the goings on at Penn.

There the disciplinary furies of the speech police have descended on freshman Eden Jacobowitz for shouting out of the window. Mr. Jacobowitz, it seems, was studying in his dorm room after midnight, when women members of a black sorority camped outside his window began stamping their feet and screaming and generally whooping it up. Irate, Mr. Jacobowitz yelled that they were water-buffalo and that if they wanted to party there was a zoo nearby.

Thus began one of the more Kafkaesque chapters in the ongoing campus follies. The campus police rushed up and asked other dorm residents—some of whom in fact had been shouting racial slurs—if they had yelled out of the window. All of them denied it. Only Eden Jacobowitz stepped forward to say he had been yelling out of the window. The police asked the dorm residents if they knew the race of the noisemakers, and were told no—except for Eden Jacobowitz, who said yes. But that, he told the police, had nothing to do with his anger.

Mr. Jacobowitz, who thought one should not lie to the police would pay a price for his forthrightness. He had yet to learn what they don't teach at freshman orientation; namely he had now entered a world where a change of racism or sexism is as good as a conviction.

The racial harassment case mounted against him reads like something from the theater of the absurd. The campus judicial inquiry officer, Robin Read, determined that the student had intended a racial slur by the reference to water buffalo, which she said suggested "large black animals that like in Africa." The student's reference to "zoo," Ms. Read charged, was also racial—notwithstanding the fact that it is a term commonly applied on campuses to noisy fraternity houses, as in the movie "Animal House." In the course of her continuing inquiry, Ms. Read asked Mr. Jacobowitz if he had been having "racist thoughts" the night of the crime. He had no such thoughts, he assured her.

Despite this official's determined believe that "water buffalo" is a racial slur, a variety of experts who could be expected to know a racial slur when they hear one, disagreed. Dr. Elijah Anderson, a leading black ethnographer and sociologist at Penn, has offered to testify in Mr. Jacobowitz's behalf, that water buffalo is not a racial slur, direct or indirect. Professor John Roberts, director of Afro-American Studies at Penn, and several other of the university's authorities on Afro-American culture and black-white relations emphatically agree.

Penn Professor Dan Ben-Amos, an expert in black folklore provided the key to the question of the water buffalo referenced. When he determined that the student had attended Yeshiva and knew Hebrew, he suggested that the student had quickly translated an extremely common Hebrew word, "behameh," which literally means "water oxen" but is used in everyday language to mean fool or thoughtless person. It has no racial connotations whatsoever.

In the course of her interrogations, Ms. Read offered the freshman a deal. There would be no further charges if he would agree to hold a racial sensitivity seminar in his form and also agree to have a harassment charge noted on his transcript. Mr. Jacobowitz refused the offer, which is why he is now on trial, facing the possibility of expulsion from Penn if found guilty. What happens to him at today's tribunal should be of

interest to anyone concerned with the state of reason and sanity on the campuses today.

[From the Washington Post, June 25, 1993]

(By Charles Krauthammer)

SPINELESS AT PENN

The only reason to regret Bill Clinton's abandonment of Lani Guinier is that it deprived the country of an open debate on the question of racial quotas. If the president sticks by another friend, Sheldon Hackney, his nominee for chairman of the National Endowment for the Humanities, and if the Senate Labor and Human Resources Committee holding hearings on his nomination today has any gumption, we shall have a debate on political correctness.

Hackney, president of the University of Pennsylvania, became a symbol of political correctness when, on April 15, a group of minority students, offended by a rightwing columnist at the student newspaper, *The Daily Pennsylvania*, stole and destroyed nearly its whole press run of 14,000 copies.

President Hackney's statement "On the Campus Controversy of April 15-16," as he delicately called this little piece of campus fascism, gives the fecklessness new meaning. It forthrightly promised to reassign to desk duty a campus security officer involved in the "altercations" that occurred when he tried to prevent the theft or, as Hackney put it, "in the ensuing altercations between security personnel and some of the students involved in this protest activity against the editorial policies in the *Daily Pennsylvania*." (More delicacy. Destruction of a press run is a "protest activity.") But then, what is any book-burning if not a protest against editorial policy?

Hackney also appointed two committees to investigate the strained relations between minority students and campus police. A separate brief statement promised that "any violation" of university policy banning newspaper confiscations "will be pursued through the university judicial system."

What was Hackney's view of this violation of free speech? "Two important university values now stand in conflict," namely "diversity and open expression," he wrote. "We must work together to narrow the distance that now seems to preclude their peaceful co-existence."

This spineless moral equivalence between writing a newspaper and destroying a newspaper was too much for 16 Pennsylvania Law School faculty. They jointly signed a letter saying the obvious: "The important university values of diversity and open expression were not in conflict here. The offensive columns in no way prevented the university from carrying out its policy of diversity. . . . Removal of the newspaper struck at the heart of the most fundamental diversity which the university should foster—diversity of thought, views and expression."

Hackney is a man who at a 1990 conference on "Academic Freedom and Artistic Expression" denounced Jesse Helms for trying to cut off federal funding for the Mapplethorpe exhibit. "My own career is built on knowing when and when not to compromise," he said flatteringly. "I generally see compromise as a virtue, but I get very nervous when fundamental principles are at stake."

So, protecting federal funding for Mapplethorpe is a fundamental principle not to be compromised. But protecting his own student newspaper from destruction by an offended group is another matter. In this case, Hackney's duty is to try "narrowing the distance"—the subtitle of his craven statement on the "campus controversy"—between writer and trasher.

President Hackney's other brushes with free speech have occurred when, under his leadership, Penn adopted codes that ban hurtful—racist, sexist etc.—speech.

One can debate the merit of speech codes. But there is no debating the merit of the defense of speech codes that Penn issued on April 28. It is a disgrace. The suppression of free speech is presented as yet another clash of values: "freedom of expression" vs. "freedom of expression for all."

What does this mean? Try to follow. "Racist hate speech," says the university, can have the effect of preventing the "full participation" of those subject to that hate speech "in the academic community." Indeed it can have the effect of "preventing some members of the community from exercising their right to participate in [the] marketplace of ideas." How? Presumably, the emotional distress produced in those offended inhibits them from speaking. Hence allowing unfettered free speech really prevents "freedom of expression for all" (i.e., for the offended).

Now, had the university been honest it would simply have said: On the one hand there is open expression, and on the other there is the pain that such open expression can cause. And on those occasions where the pain is very great, we care enough about those pained that we are prepared to curtail free speech. Hence speech codes.

Not a great argument, not very constitutional, but at least honest. Penn's argument, on the other hand, that curtailing speech is really an expansion ("for all") of free speech is a travesty, a classic Orwellianism—unfreedom is really greater freedom—of the kind one now routinely finds in that swamp of political correctness that is the American academy.

Sheldon Hackney has had a distinguished academic career. He is a noted historian. He is a man of obvious good intentions. He is also, unfortunately, a perfect example of the failure of nerve—the failure of intellectual honesty, the failure to defend principle—that is the shame of American academic leadership. To elevate Hackney (the most exquisitely named public figure since former Perot spokesman Orson Swindle) to the chairmanship of the National Endowment is to endorse those failures.

[From the Washington Post, July 6, 1993]

SHELDON HACKNEY'S DANGEROUS BALANCE

(By Richard Cohen)

Gregory Pavlik is not my cup of tea. The 21-year-old former columnist for the University of Pennsylvania's student newspaper is a mighty conservative young man. He thinks Martin Luther King is unworthy of a commemorative holiday and does not like affirmative action one bit, especially as it has been applied at Penn. Some who have read him regularly say he's an acolyte of Pat Buchanan—one of those guys who punctuates his writing with a sneer.

Pavlik is about to become famous. He figures in the controversial nomination of former Penn president Sheldon Hackney to be chairman of the National Endowment for the Humanities. Pavlik's columns so infuriated many of Penn's black students that in April they seized the entire press run of the *Daily Pennsylvanian* and trashed all 14,200 copies of it. In letters and statements, the black students explained why—their feelings had been hurt.

Hackney understood. He condemned the seizure of the newspaper but commiserated with the black students. "Two important university values now stand in conflict," he

said in a statement released after the papers were trashed. One was freedom of the press, and the other was Penn's attempt to make minority students feel "comfortable." Penn must uphold "freedom of expression as the supreme common value," Hackney wrote, but it must also become "a diverse and welcoming community." With that, he took no action against the students who had seized the newspaper.

The statement falls only a tad short of the outright supine. It is hardly a ringing defense of the First Amendment—a constitutional right, not a "value"—nor a vociferous condemnation of what amounted to a fascistic snit. The balance that Hackney attempted—he twice referred to the "pain" felt by the black students—is a bogus one. It's immaterial that someone's feelings were hurt.

What matters is truth or, at minimum, the attempt to get at it. This is what a university is all about. After all, opposition to affirmative action is hardly limited to white racists. Arthur Ashe was similarly disposed. As for the suitability of Martin Luther King as a national hero, I happen to disagree with Pavlik—but so what? The offended black students ought to ask themselves what would have happened if King's speeches and writings—offensive to many whites at the time—were censored. Freedom of the press is not a protection afforded the press; it's a protection afforded the people.

The black students seemed not to appreciate that point. Fine. They are young, and angry and have little historical perspective. That's where the university steps in. It is a custodian of our culture. Its role is to instruct, to show that a bad idea is rebutted by a better one—not by what amounts to violence. Bruised egos are often the collateral damage, as the Pentagon might put it, of a frank exchange of ideas. But in a letter to the Philadelphia Inquirer, 202 black students and faculty members expressed only one concern: Their feelings were hurt, and they did not feel welcome on campus.

Hackney's tour de force in other-handedness, coupled with some other genuflections in the direction of political correctness (his passive acceptance of speech codes, for instance) has made him the target of conservatives. This leaves me perplexed: How did conservatives become the sole guardians of our First Amendment rights and intellectual inquiry in general?

The answer is this: Too many liberals, steeped in a knowledge of racial injustice and its consequences, have crossed the line from empathy with the plight of minorities to a sympathy for whatever they do. I understand what the black students are saying, but my empathy with their wounded feelings does not extend to sympathy for their actions. The kind of "pain" Hackney mentioned is not life-threatening and is subjective. As any newspaper reader knows, pain—along with the comics—is part of the package.

Sheldon Hackney is a virtuous man, the personification of a cliché: both a gentleman and a scholar. But his nomination to a prestigious federal post presents liberals with the opportunity to assert that the values they held dear during the McCarthy period and Watergate, the ones they fought for when the government abused its power during the Vietnam era or, to be almost quaint, when it censored books and movies, are still part of our ideological creed.

Hackney's refusal to vigorously condemn the seizure of the paper and to punish the offending students creates an insurmountable

hurdle to his nomination. A longtime civil rights advocate, he meant well, but by being so solicitous to the black students, he patronized them as people and failed them as their teacher. He is an odd choice for a post whose title contains the word "humanities." In fact, he is the wrong choice.

[From the Village Voice, May 4, 1993]

CIVIL WARS ON CAMPUS

(By Nat Hentoff)

No group is a reliable defender of free speech—although individuals within groups may be. During the 1970s, much of the Jewish Establishment in the United States was vicious in attacking those Jews, including some rabbis—active in the civil rights and antiwar movements—who objected to Israel's human rights violations in the Occupied Territories. I knew a rabbi in St. Louis who was treated as if he was a traitor to all the Jews who ever lived. And from vigilantes, I received death threats because of what I had written about Palestinian rights being violated.

Recently, a white conservative columnist in the Daily Pennsylvanian angered a number of black students at the University of Pennsylvania. Instead of writing an answer or picketing the paper or boycotting the paper, they confiscated just about the entire run of an issue—some 14,000 copies—and threw them into the garbage.

A group calling itself the Working Committee of Concerned Black and Latino Students said the protest had been directed at "the blatant and covert racism continually perpetrated by both institutions and individuals on the University of Pennsylvania campus."

If white students had done the same thing in furious reaction to what a black columnist had written, I expect these Concerned Black and Latino Students might have demonstrated against so raw a violation of the black columnist's free-speech rights.

I've covered many censorship stories around the country—by perpetrators on the right and on the left—and no one has ever admitted being a censor. They all say they had the right to suppress speech that was harmful.

At the University of Pennsylvania, the Concerned Black and Latino Students not only claim they had the moral right to try to destroy all the copies of the daily newspaper but they also insist that it was a "legal protest."

Now dig this. This ranks as one of the lamest excuses for what was undeniably a deliberate suppression of speech. The Concerned Black and Latino Students—as Mary Jordan reported in The Washington Post (April 17)—declared that "not only are the papers free, but there exists no explicit restriction on the numbers of papers that any given student may remove."

Can you imagine Malcolm X—if he had ever done anything like this, which he never did—diluting the impact of his act in order to swivel out of any real responsibility for it?

Meanwhile, the head of the University of Pennsylvania, Sheldon Hackney—who is the very model of a politically correct university president—tepidly said he regretted that because of this hijacking of the papers, "two important university values—diversity and open expression—seem to be in conflict."

This is a man with the courage of a Bill Clinton. Hackney will soon be in charge of the National Endowment for the Humanities—chosen by Clinton. Some opponents of

his predecessor, Lynn Cheney, think Hackney will be open of mind and heart. They will instead be in the presence of a cautious company man. Unorthodox applicants for grants—independent and irreverent in their view and research—are not likely to be welcomed.

Now look at what Hackney implied in his statement on the stolen papers. If you have diversity on campus—more blacks, more Asians, more Latinos, etc.—then there's going to be a conflict with open expression. Where the hell does Hackney get the idea that all blacks, Latinos, and Asians want to suppress expression they don't like? Some do. Some Jews do. Some Catholics do. But to reach the utterly shallow notion that diversity and open expression are in chronic conflict is to set up yet another prejudicial stereo-type of blacks and Latinos.

What Hackney should have said, if he'd had the courage, was that in this particular instance open expression in the newspaper had been treated with destructive contempt, and the culpability should be the same for the Concerned Black and Latino Students as it would be for any white group that destroyed a day's run of a newspaper.

Hackney and some other college presidents are engaging in a form of patronizing paternalism. These young black students—so the reasoning goes—cannot be expected to take full responsibility for such acts as preventing other students from reading their newspaper. The black students are frustrated and angry, and we must understand that.

Many of them are indeed frustrated and angry. But the answer is to deal straight—to do something real about the roots of the frustration and anger. Not treat them as if they were "special" kinds of people. That's not respect. That's a con game.

I've lectured at a lot of colleges, and with very few exceptions—as at Oberlin in Ohio and Kean College in New Jersey—the presidents I meet are ignorant of how to get people who do not look like each other to see "the others" as individuals. You don't have to like all of them, or most of them, as individuals. But it's a start to breaking down group stereotypes.

Depending on the size of the college and the composition of the student body, there are a number of ways to begin direct, uninhibited dialogue among diverse students; between diverse students and faculty; and between diverse students and administrators.

A couple of years ago, I saw truly open expression among students during a nearly three-hour meeting at a college with blacks, whites, Asians, gays, and lesbians. There was rage and parody and hurt and frustration and cleansing anger, among many other emotions. But there was no longer any mistaking of individuals for groups, although there was, not a large extent, group loyalty. I hope those kinds of meetings continued there. They ought to take place at every campus.

Some months ago, I was in Washington at a meeting of the B'nai B'rith Hillel Foundations Center for Campus Study. Among those speaking were student leaders at the Hillel centers of their colleges. They were talking about Jewish-black tensions on their campuses.

Andi Milens of Washington University in St. Louis said she became friendly with officials of the Association of Black Students, and then told of this incident:

"A Jewish student on campus is a blatant racist. In response to a book sale where one of the black sororities was selling an obviously anti-Semitic book, he had a watermelon sale. Another Jewish student intervened, talked to the black students and said,

'Look, He doesn't speak for us.' And I called up my friend in the Association of Black Students and said, 'What do you want me to do? You know he's a racist, and that we don't ascribe to his beliefs. What do you want to hear from me?' He told her, and she issued a Hillel statement saying just what she told him.

The Jewish racist got worse, putting up flyers falsely quoting black speakers. Andi Milens and her friend from the Association of Black Students conferred, and he suggested that a letter be printed in the paper "from as many Jewish organizations as possible saying that this person doesn't represent the Jewish community."

Ten Jewish organizations signed the letter, and it was resoundingly clear, throughout the campus, that the Jewish racist represented only his noxious self.

Then came the notorious ad that appeared in a number of college papers around the country. The ad said that the Holocaust had never taken place. It's like telling blacks that slavery had never taken place.

The Jewish students at Washington University held a protest—a protest against the ad, not against the college paper's right to print it. There were Christian organizations at the protest, along with the Gay and Lesbian Community Alliance. But what about the Association of Black Students? Andi Milens called a leader of the association, and he said, "Tell us what to do. That's it." Members of the Association of Black Students came to the protest, and one of its leaders spoke. He emphasized that racism and anti-Semitism go hand in hand, and you can't fight one without fighting the other.

At some campuses, Jews understand that black students have no patience with anyone telling them whom they can or cannot invite. Some black students tell the students from Hillel, "You want to protest, go ahead. But don't tell me whom I can and can't have."

And Jewish students have indeed protested the appearance of—among others—Leonard Jeffries at Harvard and other campuses.

Andi Milens said at the Hillel meeting in Washington: "We're learning that the black students and the Jewish students have very different agendas. They're doing their own thing, and we have to respect that."

That respect, however, is not synonymous with bland passivity when black students invite an anti-Semitic speaker to campus. You can respect the right of a black student group to invite whomever they want while also maintaining your own self-respect by passing out leaflets—as Jewish students did at a recent Leonard Jeffries appearance at Duke University—saying, "We're against racism!" Against prejudice directed at anyone on campus.

Ross Werner of the University of Virginia said of the administration there that it seems "very interested in maintaining peace and calm. However, I have found very few individuals within the administration who are actually dedicated to working out some of the deeper underlying problems—and trying to create a less segregated university. It seems to me that the university is often interested in window-dressing, not in addressing many of the intergroup relations problems."

To begin to end the civil rights wars on campus, blacks, Jews, and others can count only on themselves. Not on the administration or the faculty. They have to form alliances based on mutual understanding and respect. It's as corny and simple and effective as that.

[From the Charlotte Observer, Apr. 29, 1993]

THE PC NOMINEE

(By George Will)

WASHINGTON.—An institution, we are told, is the lengthening shadow of a man. If so, official mischief at the University of Pennsylvania is of interest because Penn's president, Sheldon Hackney, is President Clinton's nominee to head the National Endowment of the Humanities. So consider the cases of Gregory Pavlik and Eden Jacobowitz.

Pavlik is one of many columnists for the student newspaper, The Daily Pennsylvanian. Robustly right-wing, he is comprehensively offensive to the politically correct. He is often extreme and heavy-handed, which is to say he is squarely in the tradition of undergraduate journalism.

And he is the reason why, two weeks ago, some black students met delivery trucks early in the morning, seized almost all 14,000 copies of the paper and dumped them in trash bins. The trashers offered this defense: "Not only are the papers free, but these exists no explicit restriction on the number of papers that any given student may remove." President Hackney's mincing description of this assault on press freedom. Papers "were removed from their regular distribution points."

Hackney's first statement was of regret that "two important university values, diversity and open expression, seem to be in conflict." A remarkable statement, that. It is clearly craven yet has no clear meaning. (Does the "diversity" value mean that some groups but not all groups that are part of the university's diversity have a right not to be annoyed?)

A few days later Hackney's even limper defense of the First Amendment was: "Taking newspapers is wrong." But also: "I recognize that the concerns of members of Penn's minority community that gave rise to the last week's protests are serious and legitimate." What "concerns" are "legitimate"—concerns that right-wing opinion is being published?

The university will investigate whether—yes, whether—the trashing of the paper violated freedom of expression. The severity of this investigation can be gauged by all official's statement that the university will take into account the fact that those who suppressed the newspaper "did not see their protest in the context of its being an infringement of free speech."

Hackney's credential as a defender of free speech are academically orthodox. He defends federal subsidies for Robert Mapplethorpe's homoerotic exhibits and says disapproving things about Sen. Jesse Helms, thoughts not perilous on campus. He is a First Amendment fundamentalist, but with a selectivity that suggests political calculation.

ALLEGED SLURS

The latest victim of Hackney's doctrine of balancing "diversity" (or "sensitivity") against free expression is Eden Jacobowitz. Late one evening he and others in his dorm were bothered by a noise gathering of black students outside. He and others shouted at the noisy students. Some persons shouted racial epithets. Jacobowitz shouted "Will you water buffalos get out of here?"

When campus police arrived, others who had shouted denied doing so. Jacobowitz said he had, and that he knew the race of the people he was shouting at, but he adamantly denied shouting any racial slurs.

In subsequent proceedings against Jacobowitz, one of the university adminis-

tration's thought and speech enforcers demanded to know if Jacobowitz had been having "racist thoughts" that night, and insisted that the phrase "water buffalo" was racist. However, various scholars, black and white, have defended Jacobowitz. He was for 12 years a Yeshiva student and on the fateful night he used the English translation of the Hebrew word "behomeh." It means water oxen, and in slang means a thoughtless, foolish person.

The Hackney administration tried to get Jacobowitz to plea bargain. I would stop persecuting him if he would accept the punishment preferred by totalitarian regimes and American campus liberals—re-education, in the form of "sensitivity" training. He refused.

Hackney's university is mild, "understanding" almost condoning of a politically incorrect columnist is a black group's excuse for brownshirt tactics against a newspaper. But the university is ludicrously aroused by Jacobowitz's supposed violation.

As Hackney heads for Washington to superintend the disbursement of millions of dollars to scholars, the Chronicle of Higher Education reports: "Scholars praise Hackney as even-handed, moderate."

[From the Washington Post, May 2, 1993]

SPEECH CODE SILLINESS

Campus Speech Codes outlawing racially offensive speech have not, on the whole, fared well in the courts: Those at the universities of Michigan and Wisconsin, for instance, were successfully challenged as unconstitutionally "overbroad and vague." For an illustration of those terms and the absurd difficulties and injustice to which they can lead, a disciplinary saga unfolding at the University of Pennsylvania provides a sobering example.

The facts of the case, which has gotten extra attention because University of Pennsylvania President Sheldon Hackney is President Clinton's nominee to chair the National Endowment for the Humanities, have an antic quality. A freshman named Eden Jacobowitz is said to have shouted out his dorm window at a group of black sorority students who were making noise, calling them "water buffalo" and saying there was a zoo nearby if they wanted to party. When school authorities asked if anyone in the dorm had shouted racial epithets—apparently some other students had—Mr. Jacobowitz told them what he had shouted but said it was not a racial epithet. Nonetheless, school disciplinary authorities are now investigating whether his words are actionable under Penn's speech code. One college official reportedly asked him whether he had been thinking "racist thoughts" at the time.

As a constitutional matter, "overbroad" means that a policy can cover behavior that isn't prohibited as well as behavior that is; "vague" means the person engaging in the behavior can't tell beforehand whether it will be ruled prohibited or not. That's speech regulation in a nutshell. Bad enough that this incident has led to lunacies like the involvement of a panel of racial epithet scholars, who combed through linguistic history to ascertain that "water buffalo" has never been used as an ethnic slur toward blacks; that another expert should rejoin that Mr. Jacobowitz may have been translating a Hebrew, non-racial insult meaning "oxen"; that one faculty member would characterize water buffalo as "large, dark primitive animals that live in Africa," only to debate whether water buffalo live in Africa. All of that merely amplifies what should have been

clear already, the futility and intrinsic self-destructiveness in clamping down on speech because it offends somebody.

The Penn speech code has been characterized by a local ACLU chapter as "one of the worst" at universities, and its prohibitions include any "verbal or symbolic behavior" that, among other criteria, "is intended by the speaker or actor only to inflict direct injury on the person or persons to whom the behavior is directed; or is sufficiently abusive or demeaning that a reasonable, disinterested observer would conclude that the behavior is so intended; or occurs in such a context such that an intent only to inflict direct injury may reasonably be inferred." We have added the italics; note that this astonishingly expansive formula does not allow the speaker's interpretation of his own words to be accepted over the interpretation of a listener or third party.

Educational institutions should educate, not least about racism and the need to fight it with stronger arguments; this, not suppression, continues to be the best way to combat offensive speech when, inevitably, it occurs. But that responsibility to educate is also a serious one. It's shameful and ridiculous for such institutions to then squander the moral high ground in the argument by pressing insupportable, trivial positions. Mr. Hackney ought to speak on this subject before he is confirmed to his new job, which after all is about education too.

[From the Washington Times, June 25, 1993]

SHELDON HACKNEY'S TURN

Being a Clinton administration nominee is clearly not a bed of roses. But hope springs eternal, and today yet another ambitious soul will trust his name and reputation to the White House handlers who are supposed to steer him through the Senate confirmation process. His name is Sheldon Hackney.

Mr. Hackney is president of the University of Pennsylvania. He is seeking the chairmanship of the National Endowment for the Humanities (NEH). But many people will know him better as the man who made water buffaloes the most discussed animals of the spring season after Stephen Spielberg's dinosaurs.

Will Mr. Hackney be the right man to step into the footsteps of Lynne Cheney, the endowment's previous and highly capable chairman? Observers of the academic scene have found him personally to be a man of integrity and a scholar of note. His long career has included posts at Princeton and Tulane universities.

However, the incidents relating to Penn's speech code that have come to light in the past few months have not been reassuring. The speech code promulgated under Mr. Hackney's stewardship has been used selectively, and sometimes irrationally, against those whose views are construed not to be in line with mainstream (that is, in this context, left-wing or Marxist) political views on campus. In the case of Eden Abramowitz, the student who yelled "water buffaloes" at a group of noisy nighttime revelers who happened to be black girls and almost got himself expelled as a result, Mr. Hackney's failure to stop a patently absurd and unfair prosecution does not reflect favorably on his judgment or leadership abilities.

Perhaps Mr. Hackney himself believes that Draconian punishment is truly needed to stamp out the pervasive evils of racism, homophobia and other assorted -isms, on the nation's campuses. He may well believe that—many academics do these days—and if he does, it will be illuminating to hear him

say so. A lot of people do not share that view, of course, believing that the greater danger today is the restrictions on freedom of expression that occur whenever the content offends a particular, "politically correct" constituency.

On the other hand, it may be that Mr. Hackney himself is uncomfortable with the prevailing trends in academia but is not confident enough or strong enough to buck them. It could be that Penn's student-life program has been run mainly by officials with their own agendas. Mr. Hackney has eloquently defended the free exchange of ideas, though as far as can be told, mostly when the ideas in question belonged to the left-liberal part of the political spectrum. Some years ago, he vigorously defended Penn's exhibition of Robert Mapplethorpe photos. However, when it came to defending the campus newspaper's right to publish columns critical of the university's affirmative action program, his response has been pretty lukewarm. Suspicions of a double standard at work would seem justified.

As in the case of the National Endowment for the Arts, it is clear that people don't have a constitutional right to federal funding, be it of their art or their research. Still, the least one should expect from an agency such as the NEH is that grant applications be judged on their educational value or their scholarly merit, as opposed to their political affiliation. An NEH chairman has to believe in high standards and open academic inquiry. That is why the Senate Committee on Labor and Human Resources today must ask of Mr. Hackney whether he does indeed believe in these things. If he does not, then clearly he is not the man for the job. If he does, the senators will need assurances that he can stand up to the pressures of the quota crowd and the politically correct academic community. There is no doubt those pressures will be intense.

Mr. HELMS. Madam President, let me say something most sincerely, as I conclude, Madam President. I do hope that all of Dr. Hackney's critics will be proved wrong. I pray that I will be proved wrong. And if I am proved wrong, I will acknowledge it publicly and apologize to Dr. Hackney. But seeing no possibility of that happening, I feel obliged to vote in opposition to his nomination.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. WOFFORD. Madam President, my colleague from North Carolina raises serious issues. Members of the Labor and Human Resources Committee raised similar questions—all of those questions, indeed—and more during Sheldon Hackney's confirmation hearing.

My colleagues on the committee asked difficult, thoughtful, probing questions. These questions were answered to our satisfaction and the committee voted unanimously to confirm Dr. Hackney.

This past spring was not an easy time at the University of Pennsylvania. The Labor Committee fully examined each incident. The members of the Labor Committee did not agree with every action that was taken by the university or every statement that was made. But

I think each Senator left the hearing with a greater understanding of the challenges facing university presidents today.

Now, as to the specific points just made by the Senator from North Carolina, let me at least respond to the most notable errors of fact.

The first example of what was called a failure of nerve had to do with the ROTC, where it was stated that he had opposed the ROTC on campus. Senator KASSEBAUM put that question to Sheldon Hackney.

I ask unanimous consent that all of her questions and Sheldon Hackney's responses be printed in the RECORD at this point.

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

QUESTIONS FOR THE RECORD BY SENATOR KASSEBAUM FOR SHELDON HACKNEY, NOMINEE FOR CHAIRMAN OF THE NATIONAL ENDOWMENT OF THE HUMANITIES

1. Regarding the Eden Jacobowitz affair, did you think the charge of racial harassment against Mr. Jacobowitz was justified? If so, please explain why.

I did not think the charge of racial harassment was justified. Penn's policy is very narrowly focused. It applies only in situations in which racial or ethnic slurs are used in face to face encounters and with no other intent than to inflict harm. The facts of the case do not meet these criteria. In addition, because of the misapplication of the policy and the confusions that abound in this case, I have come to feel that even though civility is very important in an educational setting it is a mistake to try to enforce it among members of the campus community through rules and penalties administered through a judicial system.

2. In retrospect, do you believe you should have intervened in the university judicial process brought against Mr. Jacobowitz, or do you stand by your action not to intervene?

As awful as the spring was, I still think it was not appropriate for me to intervene in the judicial procedure. There is no provision for the President or for any officer of the University to intervene. To have intervened would have called into question the legitimacy of the entire system that handles dozens of cases every year, denied to the complainants their right to have their complaint adjudicated by a faculty-student hearing panel, and thrown the campus into an even more divisive crisis than the one through which it actually lived. Had the system worked properly, and a hearing panel heard the case, I believe that justice would have prevailed. As it turned out, the case came to a close when the complainants withdrew their charges.

3. In the episode involving the theft of 14,000 copies of the Daily Pennsylvanian, the University's student newspaper, in April, 1993, please explain your reaction at the time of the incident, including the complete statement issued by your office.

I append the statements issued at the time of the incident. I believe they make clear that I recognized the seriousness of the violation and emphasized the primacy of free speech on a university campus.

4. Please describe in detail what your administration did to identify and bring charges against those responsible for the

Daily Pennsylvanian theft? Has anyone ever been charged in the theft? If so, what was the result in terms of penalties meted out?

The Committee on Open Expression (an important faculty-student committee that monitors the Open Expression guidelines) has ruled that the incident was a violation of the Open Expression Guidelines, thus making clear that charges would be brought. A number of students apparently involved in the incident have been identified and will face judicial procedures when they return to campus for the fall term. The one senior involved has had a "judicial hold" put on his transcript, meaning that he must clear up his disciplinary status before receiving his degree or being able to have his transcript sent to employers or graduate schools. In view of the seriousness of this case, the Vice Provost for University Life has appointed a respected senior faculty member to serve as the Special Judicial Inquiry Officer for this case.

5. Do you believe your response to the incident was appropriate considering the seriousness of the act in the context of First Amendment rights to free expression?

Yes, although I do wish now that in my original statement I had not used a formulation that was so easily taken out of context and misrepresented. If I could write the document again, I would undoubtedly use language that was even clearer and stronger in condemning the confiscations.

6. Your responses to the Jacobowitz affair and to the newspaper theft incident have been characterized as employing a double standard on the issue of free expression. What is your response to that charge?

The charge is absolutely false. Throughout my career, I have defended free inquiry, free speech, and academic freedom for people from all parts of the political spectrum, left, right and center. I have repeatedly done so when under considerable pressure to cancel appearances of controversial speakers or to discipline students or faculty who have earned the disapproval of persons or groups on the campus and off. The list of speakers whose security arrangements I have personally supervised is a veritable who's who of controversy over the past 20 years, from William Shockley to Louis Farrakhan and all shades of opinion between.

One incident in particular has been used to suggest that I am less than even handed. In the early 1980s, the South African Ambassador to the United States accepted an invitation to speak from a student group. The student group was then informed that University policy (which preceded my arrival at Penn) required host groups to pay all the costs of invited speakers, including security costs. Special security required for the South African Ambassador would have incurred substantial costs. The student group therefore withdrew the invitation. As soon as I heard of this situation and realized that it was based on a University policy, I changed the policy. The University isn't really open to all points of view if a host group is required to be rich enough to pay the costs involved in keeping opponents of the speaker from disrupting the event. The new policy was thus in effect when all subsequent speakers, including Louis Farrakhan, have been invited to speak on campus.

7. The Wall Street Journal reported that at the time of speaking engagement by artist Andres Serrano on the University of Penn campus in 1989-90, you refused to order the removal of campus sidewalk graffiti depicting anti-religious and graphic sexual symbols. Please explain what occurred.

As with so much that the Wall Street Journal has reported about me, the facts are wrong in important respects, highly distorted in other respects, and the story presented in a misleading way. Early on the morning of April 13, 1993, members of Penn's groundskeeping crew arrived on campus to find, written in chalk, graffiti depicting religious and sexually graphic and offensive symbols and slogans on Locust Walk, the main pedestrian thoroughfare intersecting the Penn campus. The groundskeeping crew, on its own initiative, immediately washed off this graffiti. Later that day the students—members of a gay rights group on campus—who had originally done the graffiti writing, protested to Penn's Assistant Vice Provost for Student Life that the erasure of the graffiti violated the University's Guidelines on Open Expression. The Committee on Open Expression, following precedent, found that the graffiti was protected speech as long as the graffiti was temporary and did not permanently deface University property. Members of the group returned the next day and renewed their graffiti writing. The issue was handled under regular University open expression policies and procedures. I was not personally involved in it. The incident did not relate to Andres Serrano's visit to Penn, which took place on December 5, 1990.

8. Please explain your criticism of the Helms Amendment as it pertained to the work of artists, Robert Mapplethorpe and Andres Serrano.

I did criticize the language of the Senate amendment to the NEA-NEH appropriation bill for FY90 (the Helms Amendment) because I believed that the language of the bill—which Congress wisely did not include in the final version of the appropriations legislation—was impossibly vague and overbroad. The Helms amendment to the FY90 appropriations bill would have imposed unworkable content restrictions, and I believe that Congress has been wise in its judgment not to adopt it.

9. The Wall Street Journal reported that you proposed banning ROTC from the University of Pennsylvania campus in 1990 because of the military's prohibition on gays and lesbians serving in the military. Is this true?

As with a number of other assertions made by the Wall Street Journal, this is simply untrue. I am a supporter of ROTC on campus. Indeed, I am a product of the NROTC program at Vanderbilt University, and I have spoken frequently on campus about why I think it is a good program.

10. You have been quoted in the past as stating that the impact of "political correctness" on American university campuses is "greatly exaggerated." Do you believe that "political correctness" contributes to the free exchange of ideas and tolerance of different points of view in American academia today?

The term "political correctness" is almost hopelessly vague and imprecise. It began as a term of self-derision, and now it has taken on a life of its own as a caricature of a certain kind of liberal left orthodoxy that is so solicitous of the interests of groups that can claim the status of having been victimized by society that the general interests of the University are of secondary importance and at times even the search for truth is threatened. Fortunately, "political correctness" does not dominate. American campuses, thought it is something about which faculty and academic leaders ought to worry about. I believe that I am representative of the broad mainstream of the American profes-

orate that sees danger in any potentially intolerant orthodoxy, but that may also see partial merit in some ideas that may be part of a "politically correct" position.

Mr. WOFFORD. She said:

The Wall Street Journal reported that you proposed banning ROTC from the University of Pennsylvania campus because of the military's prohibition on gays and lesbians serving in the military. Is this true?

Dr. Sheldon answered:

As with a number of other assertions made by the Wall Street Journal, this is simply untrue. I am a supporter of ROTC on campus. Indeed, I am a product of the NROTC program at Vanderbilt University, and I have spoken frequently on campus about why I think it is a good program.

I might add, if you note the biography of Sheldon Hackney, you see he gave distinguished service in the military service in connection with and after his service in the ROTC.

Then it was said that the trashing, the destruction of copies of the Daily Pennsylvanian in April 1993 had evoked no opposition from Sheldon Hackney. That is also not true. The distinguished Senator from North Carolina has stated that Sheldon Hackney saw nothing wrong with the destruction of those papers.

I submit the statement for the RECORD of April 22. I ask unanimous consent the full statement be printed in the RECORD.

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

STATEMENT APRIL 22, 1993

The following statement was issued by University of Pennsylvania President Sheldon Hackney today in response to last week's events involving the removal of copies of the independent student newspaper, *The Daily Pennsylvanian*, by students protesting its editorial policies:

Freedom of expression is essential to academic life. At Penn it is foremost among our core values, and we are committed to upholding it. The University has long-established policies to protect it.

Taking newspapers is wrong, as I made clear in a policy statement four years ago and reiterated at the time of last week's events and restated again this week.

Those who are accused of violations of University policies will be subject to the provisions of the University's judicial system. Due process in determining the guilt or innocence of any accused party is essential. We shall not take shortcuts.

I recognize that the concerns of members of Penn's minority community that gave rise to last week's protest are serious and legitimate. We have worked hard to make Penn a place in which everyone could feel full membership. The University is, and will remain, committed to that goal, and it is working diligently to achieve it.

In the final analysis, the aim of a diverse and free forum for ideas in which all are welcome and able to participate will be achieved only when all members of the community listen more carefully and respond less defensively to the views and concerns of others. I urge the Daily Pennsylvanian's staff and editors and those who object to its editorial, reportorial and staffing practices to work together to resolve their common concerns.

Allegations have also arisen of police misconduct in the handling of last week's events by University police and security personnel. There is now a process in place to determine what occurred and to respond appropriately once those facts have been determined.

These events have also highlighted questions about the appropriateness of some standard police procedures within the special circumstances of a university community. Those questions are being reviewed by a special commission, and the University's Division of Public Safety will use its findings to revise its training and procedures as appropriate.

A modern university is the focus for all of the tensions that exist in our society. As such, it must remain steadfast in its commitment to all of its core values, especially when those tensions produce conflicts that we must work to resolve. We shall not do less.

SHELDON HACKNEY,
President.

Mr. WOFFORD. I will just read the following excerpts.

Freedom of expression is essential to academic life. At Penn it is foremost among our core values, and we are committed to upholding it. The University has long established policies to protect it.

Taking newspapers is wrong, as I made clear in a policy statement four years ago and reiterated at the time of last week's events and restated again this week.

It is wrong also to say that no action was taken in regard to the students who destroyed those newspapers.

On the contrary, a number of those who were apprehended and apparently seizing the newspapers were, in fact, arrested. Some of them were handcuffed. All of them who have been identified are part of a university process of discipline. The one student who graduated before the proceedings could come to a close this fall had his papers withheld, which means that he cannot use his transcript to be sent to employers or to graduate schools until the matter has been cleared up.

In view of the seriousness of this case, the vice provost for university life has appointed a respected senior faculty member to serve as a special judicial inquiry officer in the case of those students who seized that newspaper.

Those are just a few examples of how the caricature of Sheldon Hackney that has appeared in some publications has no basis in fact.

Mr. WOFFORD. Madam President, I suggest the absence of a quorum. I ask unanimous consent the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WOFFORD. Madam President, Senator PELL is the Senate sponsor of

the legislation that established the National Endowment for the Humanities in 1965. He has chaired or been the ranking member of the subcommittee on Education, Arts and Humanities since then. He has a continuing involvement with the life of this agency.

Mr. PELL. Madam President, I rise to add my strong endorsement to the nomination of Dr. Sheldon Hackney to be Chairman of the National Endowment for the Humanities.

Dr. Hackney is a man of tremendous stature and intelligence who will bring years of scholarly and administrative experience to this important position. His impressive record includes 18 years as the president of two major universities—Tulane and the University of Pennsylvania. Prior to this he was provost and professor at Princeton University.

As my colleagues know, I have long been involved in the life of the Humanities Endowment and will continue to do all I can to support and encourage its work. I know that it will be a great pleasure working with Dr. Hackney in the years ahead.

Much has been made in the press of a few incidents that occurred at the University of Pennsylvania during Dr. Hackney's tenure there. Dr. Hackney provided such thorough and satisfying answers when asked about these issues in his confirmation hearing that committee members voted unanimously—17-0—to recommend his confirmation to the full Senate.

Finally I want to say how fortunate we are that President Clinton has nominated such an outstanding figure in the academic community to take on this leadership role in the humanities. I applaud the President for his inspired choice.

I urge my colleagues to join me in voting to confirm Sheldon Hackney.

Mr. KENNEDY. Madam President, I am pleased to recommend that the Senate confirm the nomination of Dr. Sheldon Hackney to be Chairman of the National Endowment for the Humanities.

Dr. Hackney is a superb appointment for this position—he is a distinguished historian, scholar, and college administrator. He has been a leader in our national academic community for the past 30 years, bringing great distinction to himself and the institutions he has served.

The Labor and Human Resources Committee approved the nomination unanimously—and that consensus is a great tribute to Dr. Hackney's brilliant credentials. With bipartisan support and this strong mandate, Dr. Hackney will be able to provide strong leadership at the Humanities Endowment.

The Endowment is an important agency that offers Federal support for advanced scholarly research. It plays an effective role in encouraging academic work in the humanities.

Dr. Hackney has had a remarkable career and lifelong commitment to public service. He has outstanding professional qualifications for this position.

One impressive aspect of Dr. Hackney's career is his unequivocal view that the humanities belong in all of our lives.

At the University of Pennsylvania, where he most recently served as president, Dr. Hackney undertook a series of initiatives to make the university a more effective part of its community in the city of Philadelphia.

During the confirmation process, a handful of critics raised questions about two incidents that occurred recently on the Penn campus. The hearing in the Labor Committee provided ample opportunity to examine these incidents in full.

Dr. Hackney was able to explain the facts to the satisfaction of the committee members—and discount the flimsy allegations against him.

I am convinced that Dr. Hackney is a strong advocate for free expression. He has often spoken of the importance of including all points of view in the humanities. He will oppose any attempt to impose any concept or orthodoxy or political correctness on the grantmaking process.

I am especially pleased that Dr. Hackney, by training, is an historian. His knowledge, understanding and perspective in this area will be of great value to the agency. He has a clear sense of the Nation's past and an equally clear vision of its future.

His stature in the academic community will also be a great asset to the Agency which, along with its sister Agency, the National Endowment for the Arts, has been on a political rollercoaster in recent years.

Dr. Hackney offers the Humanities Endowment a vision and temperament that will set the course for the Agency for its second quarter century. Under his leadership the Agency will, I am sure, do an effective job of achieving its promise.

I commend President Clinton for his nomination of Dr. Hackney, I urge the Senate to confirm him.

Mr. WOFFORD. Madam President, this is not a partisan matter. I do not know of any nomination that has had such bipartisan support.

I ask unanimous consent to print in the RECORD and read, in part, the letter from Mrs. Walter H. Annenberg.

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

WYNNEWOOD, PA,
June 3, 1993.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Committee on Labor and Human Resources, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: As a member of the Board of Trustees of the University of Pennsylvania, I offer the strongest endorsement of Sheldon Hackney for the position of

Chairman of the National Endowment for the Humanities and I urge the Senate Labor and Human Resources Committee to approve his appointment without reservation.

Since becoming Penn's 21st chief executive in 1981, Dr. Hackney has focused on a range of institutional needs, including curricular reform, research enhancement, development and long-range planning, public involvement, and internationalization, and he has achieved an exceptional record as a national leader in each of these areas. In spite of this, in difficult situations, Dr. Hackney has proven that he can bring together complicating elements to produce a constructive solution. But such accomplishments are even more meaningful in the context of Dr. Hackney's deep and abiding commitment to freedom of expression.

In recent months, two incidents on the Penn campus have put Dr. Hackney's personal and institutional values to the test. In both cases, in spite of intense media coverage, President Hackney demonstrated not only remarkable restraint in dealing with the deluge of publicity but also great integrity in helping to continue a "wholesome and mutually supportive campus community."

One episode involved the printing of racially hostile commentaries in the independently operated campus newspaper and the resulting confiscation of that publication by some minority students. The second episode involved a white student's alleged racist slur in response to excessive noise by several black sorority women. Both incidents raised a host of complicated legal issues, especially First Amendment protections. In his handling of these and other incidents throughout his term as president, Sheldon Hackney has steadfastly articulated freedom of expression, civility, and respect as the core values of the University. He has made it clear on numerous occasions that the Bill of Rights provides for certain freedoms but it does not give people the freedom to abuse that concept.

Walter and I respectfully ask you to give Sheldon Hackney an opportunity to serve his country with the same strong devotion, energy, and fairness that has guided his presidency at the University of Pennsylvania.

Senator Kennedy, please give this your most careful consideration. I cannot imagine President Clinton putting forward a better candidate from either the Republican or Democrat standpoint.

Sincerely,

Mrs. WALTER H. ANNEBERG.

Mr. WOFFORD. Madam President, she writes:

As a member of the Board of Trustees of the University of Pennsylvania, I offer the strongest endorsement of Sheldon Hackney for the position of Chairman of the National Endowment for the Humanities.

*** he has achieved an exceptional record *** remarkable restraint in dealing with the deluge of publicity but also great integrity helping to continue a "wholesome and mutually supportive campus community."

She mentions the incidents we have talked about and then says:

In his handling of these and other incidents throughout his term as president, Sheldon Hackney has steadfastly articulated freedom of expression, civility and core values of the university. He has made it clear on numerous occasions that the Bill of Rights provides for certain freedoms but it does not give people the freedom to abuse that concept.

Walter and I respectfully ask you to give Sheldon Hackney an opportunity to serve his country with the same strong devotion, energy, and fairness that has guided his presidency at the University of Pennsylvania.

Please give this your most careful consideration. I cannot imagine President Clinton putting forward a better candidate from either the Republican or Democrat standpoint.

Madam President, I also ask unanimous consent to print in the RECORD a letter from the cultural adviser to Gov. Robert Casey, of Pennsylvania, Sondra Myers.

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

OFFICE OF THE GOVERNOR,

Harrisburg, PA, June 10, 1993.

Senator HARRIS WOFFORD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR HARRIS: It is with great enthusiasm that I commend to you the confirmation of Sheldon Hackney as Chairman of the National Endowment for the Humanities. I bring to this endorsement extensive knowledge of an experience with the Endowment and with Dr. Hackney.

As a former chair of the Pennsylvania Humanities Council and a past president of the Federation of State Humanities Councils, I have worked with the Endowment for over twenty years. The agency, although modest in size, is of primary importance in fostering and supporting research and dissemination of ideas which are critical to Americans' understanding of our own history and of our knowledge of the world and our place in it.

As a nation we are at a crossroads. We are entering a new millennium, one which presents us with the challenges of maintaining our precious legacy of democracy in a climate of a domestic and international change. The NEH is the leading federal agency to nurture understanding of ourselves and others. It requires, more than ever before, the leadership of one who is deeply grounded in the disciplines of the humanities and who has the skills, experience and vision to guide this major agency into the future.

I have had the privilege of knowing Sheldon Hackney since he came to Pennsylvania to assume the presidency of one of our premier academic institutions. During this tenure at the University of Pennsylvania, the institution has made enormous strides in developing—academically and economically, and, critically important, too, in its responsibility to the community.

Dr. Hackney is amply qualified for a position of national leadership. His intellectual acuity, his integrity of character and his overriding concern for the public good are qualities that insure a well conceived and well managed Endowment, one which will preserve the principles and purposes which informed its creation by the Congress. It will be an agency for the people.

Dr. Hackney is not a ideologue; he is a pragmatic idealist, in the tradition of our Founding Fathers, who has a passionate commitment to learning and a profound knowledge of its importance to the future of American democracy.

I have full confidence that he would serve the Nation Endowment for the Humanities with honor and distinctions. Hope and trust that the committee will confirm his nomination with all due speed and confidence.

Sincerely,

SONDRA MYERS,
Cultural Advisor to the Governor.

Mr. WOFFORD. "I also ask unanimous consent to print in the RECORD several other items, including a letter from the president of the American Council on Education.

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

AMERICAN COUNCIL ON EDUCATION,

Washington, DC, July 22, 1993.

Time Magazine Letters,
Time & Life Building, Rockefeller Center, New York, NY.

TO THE EDITOR: In its haste to tell a sensational story at the expense of former University of Pennsylvania president Sheldon Hackney, President Clinton's nominee to head the National Endowment for the Humanities ("Wine and Cheese Liberal—At Taxpayer's Expense," July 26, 1993), Time neglected to tell the whole story.

The piece claims that Penn "admitted misspending... nearly \$1 million in federal grants earmarked for academic research." But the story fails to note that Penn received over \$890 million in research grants during the five years covered by a government audit. In other words, the amount in question is roughly one-tenth of one percent (.001) of the total received. Time also neglected to mention that Penn repaid the money in dispute.

Few organizations, public or private, can match this performance. Indeed, if Dr. Hackney demonstrates equally good stewardship of the taxpayers' money as chairman of HEH, he should get a medal.

Sincerely,

ROBERT H. ATWELL,
President.

JUNE 24, 1993.

Hon. HARRIS WOFFORD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR HARRIS: Enclosed please find a letter which has been forwarded to the Philadelphia Inquirer, the Philadelphia Daily News and the Philadelphia Tribune. It is the feeling of the people whose names are typed below that Sheldon Hackney deserves the support of this entire region by reason of the major contributions he has made on all our behalves. We hope that he will have your support in the United States Congress. That support will be very much appreciated by all of those whose names appear below the letter and by the undersigned.

Sincerely,

MILTON A. FELDMAN.

ESTÉE LAUDER COMPANIES,
New York, NY, June 24, 1993.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I'm writing you in support of the nomination of Dr. Sheldon Hackney to head the National Endowment for the Humanities. I serve on the Board of Trustees of the University of Pennsylvania, and therefore have known Sheldon Hackney intimately over the entire time of his tenure at the University. Simply stated, he is a man of extraordinary talent, brilliance, and deep humanitarian convictions.

I urge you and your fellow Senators to confirm his appointment... it will be a great step for the Nation.

With warmest personal regards.

Sincerely,

LENARD A. LAUDER.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 23, 1993.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
Dirksen Building, DC.

DEAR TED: I want to add my voice to those supporting Sheldon Hackney to be Chairman of the National Endowment for the Humanities.

The nation is fortunate that an individual of Dr. Hackney's caliber has been nominated to head the NEH. Dr. Hackney has served with distinction for the past 12 years as president of the University of Pennsylvania. He served as president of Tulane University from 1975 to 1981 and as provost of Princeton University from 1972 to 1975.

Dr. Hackney is a noted scholar of the Southern United States and an award-winning author. He is also a professor of history at Penn who regularly teaches undergraduates. He has conducted one of the most successful fund-raising campaigns in higher education history at Penn and has been an effective leader in community activities and education organizations.

Dr. Hackney's efforts have built the University of Pennsylvania's reputation as a leading research university that provides a superb undergraduate education. He has emphasized teaching, research and service as the three central missions of modern research universities.

I believe his outstanding record and life achievements make him ideally suited to head the NEH. I have complete confidence in his abilities and judgment, and I urge you and the members of the Committee to give his nomination favorable consideration.

Sincerely,

JOSEPH M. McDADE,
Member of Congress.

THE METROPOLITAN MUSEUM OF ART,
New York, NY, June 21, 1993.

Hon. EDWARD M. KENNEDY,
Senate Russell Office Building, Washington,
DC.

DEAR TED: I am writing you to express support for Sheldon Hackney to be Chairman of the National Endowment for the Humanities. Your support for his candidacy is critical to his approval by the Senate.

I have known Sheldon well for 15 years and have watched his entire presidency at the University of Pennsylvania. Indeed, my son was one of the many young people who were privileged to be at Penn during Sheldon's tenure. We have seen Sheldon and his wife on many occasions over these years. We shared "donors" to the Met and the University of Pennsylvania so I know him to be a much respected and effective president, fundraiser, and soul-mate in the non-profit world.

My sense of Sheldon is based on long years of discussion and observation during my years as American Ambassador to Venezuela, then to Czechoslovakia and for the last seven years as a museum president. He is a strong, intelligent and humane leader, the likes of which the U.S. Government only rarely attracts into its service. Throughout his career and indeed, throughout his life, Sheldon has advocated and practiced policies that encourage free and open expression of competing views.

Sheldon will bring to this important job the humanist tradition of a historian and a family tradition rooted in the same spirit. For more than a decade he has run one of our finest universities with a sterling record during a difficult time for the academy. Few university presidents have accomplished as much with so little uproar during this past twelve years as Sheldon.

When you look closely at his record, I am sure you will determine that he will make an outstanding leader of the National Endowment for the Humanities. I hope that you will be one of those who welcome his appointment.

Sincerely,

WILLIAM H. LUERS,
President.

Below, the Chairman of the Trustees of the University of Pennsylvania shares with the campus his message to the Trustees upon the resignation of President Sheldon Hackney.

A MESSAGE TO THE UNIVERSITY COMMUNITY,
APRIL 16, 1993

We were delighted to learn earlier this week of President Clinton's intention to nominate Sheldon Hackney as the next Chairman of the National Endowment for the Humanities. While it is difficult indeed to imagine Penn without Sheldon, this is a magnificent opportunity for him and one that reflects well not only on him but also on Penn.

Sheldon's appointment, which is yet subject to Senate confirmation, has accelerated what has been his intention to step down at the successful conclusion of the Campaign for Penn. However, taking many factors into account, including the uncertain timing of the Senate hearings, Sheldon informed me earlier this week that he intends to resign as president of Penn no later than June 30, 1993, to give the Trustees the opportunity to begin immediately the search for Penn's next president and to identify an acting president to serve in the interim. The executive committee met yesterday on campus; we have begun to convene the consultative committee to advise us on Penn's next president and will be prepared to announce the acting president next week.

Penn's accomplishments since Sheldon's arrival in February 1981 are without parallel in higher education. He has clearly been one of Penn's greatest chief executives, leading one of higher education's most thorough and effective institutional planning processes. While maintaining its strong regional base, Penn's student body has become nationally and internationally diverse. Looking toward Penn's long-term future as well as its current operations, Sheldon has continued our tradition of solid fiscal management. His presidency has seen endowment increase five-fold to top \$1 billion for the first time in history. The Campaign for Penn is fast becoming one of higher education's legends, already having raised \$955.3 million toward the \$1 billion goal, and providing funding for 122 endowed chairs, the highest number in the history of higher education development efforts.

Beyond these successes, Sheldon leaves the lasting imprint of his multifaceted efforts that strengthened Penn's reputation as a leading research university that provides a superb undergraduate education, his leadership of nationally-recognized activities that place Penn in the vanguard of university-community partnerships, and his firm and clear devotion to creating a humane and civil environment for all members of Penn's community.

As we look to the future, we do so with a strong foundation of outstanding faculty, students, administrators and staff, a solid financial base, and a reputation for being the best managed institution of higher education in the country. Thanks to Sheldon and all of those who have been part of his team, the University of Pennsylvania is well positioned to continue its emergence as, in his words,

"the leading international research institution that really cares about undergraduate education." As we move to form the consultative committee to advise the Board of Trustees on candidates for Penn's next president, we do so with confidence. Penn is an exciting place to be, and its leadership is one of higher education's most compelling posts. I have no doubt that we will attract an outstanding group of candidates.

Finally, I am sure you join me in wishing Sheldon and Lucy the very best as they move into the next phase of their extraordinary lives.

Sincerely,

ALVIN V. SHOEMAKER.

THE SHELDON HACKNEY I ADMIRE

The Lani Guinier battle is over, but another one looms, this time not about a professor at the University of Pennsylvania, but about the president of that same Ivy League redoubt, Sheldon Hackney, whom Bill Clinton has nominated to chair the National Endowment for the Humanities, where Lynne Cheney used to sit.

For the past dozen years, Mr. Hackney has run Penn admirably. Before that he was president of Tulane University and earlier, provost at Princeton. He is a teaching historian by trade, his major scholarly preoccupation his beloved South. Unlike Ms. Guinier, it is not his writings that have triggered hostile reaction to his nomination from the editorial writers of *The Wall Street Journal*; instead, what has riled his critics are recent events at Penn in which Mr. Hackney, you aver, went out of his way to coddle minorities. You paint him as the wimpish captive of the forces of political correctness.

I should explain that this man is my friend and that I know him well enough to suggest that perhaps you should get to know him and his academic management style better before you fulminate against him further, for this is a strong, gentle, quietly courageous man whose years in academe have been distinguished and almost universally applauded.

It is obvious that university campuses today are yeasty, sometimes quarrelsome places, especially urban campuses like Penn, where each year more and more minorities come to study, to exercise their intellects and their emotions. Each year new tensions develop, new muscles are flexed, group for group, minority for minority. But Mr. Hackney has labored to make Penn a place of comity despite the conflict quotient; and this at a time that Penn's undergraduate minority enrollment has grown from 13% to 30%.

He is about to undergo the Washington ritual of Senate confirmation hearings, during which no doubt he'll be asked, among other things, about those recent events described by one writer as "racial sensitivity gone haywire," which called down on him the wrath of those aforementioned critics. In the best of all worlds, perhaps, university campuses would spawn more light, less heat, but those—apparently—are not the conditions that prevail at many campuses across America.

Mr. Hackney has dealt with various eruptions over the years, including protests against the predictable spectrum of invited speakers from Farrakhan to Reagan; despite all, he has succeeded by and large in keeping the peace at Penn. Addicted to freedom of speech for all comers, he has inevitably stumbled. Who hasn't? But for his critics to define him, his convictions and his career in terms of those virtually solitary fumbles is unfair and dishonest.

If Sheldon Hackney's fine stewardship of a great university can be so misrepresented, it is not difficult to comprehend why capable others who might be called upon to serve in Washington would think thrice before subjecting themselves to similar misinformed, occasionally malicious, politically motivated calumny.

MIKE WALLACE,
Correspondent,
CBS/60 Minutes.

NEW YORK.

THE NATIONAL HUMANITIES ALLIANCE
ACTIVE MEMBERS OF THE NATIONAL HUMANITIES ALLIANCE

American Academy of Religion
American Anthropological Association
American Association of Museums
American Association for State and Local History
American Council of Learned Societies
American Folklore Society
American Historical Association
American Musicological Society
American Philological Association
American Philosophical Association
American Political Science Association
American Society for Aesthetics
American Society for Eighteenth-Century Studies
American Society for Legal History
American Sociological Association
American Studies Association
Association for Asian Studies
Association for Jewish Studies
Association of American Colleges
Association of American Geographers
Association of Research Libraries
College Art Association
Commission on Preservation and Access
Shelby Cullom Davis Center for Historical Studies Princeton University
Federation of State Humanities Councils
The George Washington University
History of Science Society
Independent Research Libraries Association
Linguistic Society of America
Medieval Academy of America
Middle East Studies Association
Modern Language Association
National Council of Teachers of English
National Humanities Center
Organization of American Historians
Phi Beta Kappa Society
Renaissance Society of America
Research Libraries Group
Social Science Research Council
Society for the History of Technology
Society of Biblical Literature
Special Libraries Association
Speech Communication Association
Teachers for a Democratic Culture

ASSOCIATE MEMBERS OF THE NATIONAL HUMANITIES ALLIANCE

African Studies Association
American Dialect Society
American Library Association
American Numismatic Society
American Society for Theatre Research
Association of American Law Schools
Association of American University Presses
Center for the Humanities, Wesleyan University, Connecticut
College English Association
Commowalth Center for Literary and Cultural Change, University of Virginia
Community College Humanities Association
The Council of the Humanities, Princeton University

The Hastings Center
Institute for Advanced Study
Institute for the Humanities, University of Michigan

Institute for the Medical Humanities, University of Texas Medical Branch, Galveston
Institute of Early American History and Culture, College of William and Mary
International Research and Exchanges Board

Midwest Modern Language Association
Northeast Document Conservation Center
Philological Association of the Pacific Coast

Popular Culture Association
Shakespeare Association of America
Sixteenth Century Studies Conference
Society for Ethnomusicology
Society of Architectural Historians
Society of Christian Ethics
South Atlantic Modern Language Association

South Central Modern Language Association

Doreen B. Townsend Center for the Humanities, University of California, Berkeley
University of California Humanities Research Institute, University of California, Irvine

Virginia Center for the Humanities
Mr. WOFFORD. I yield the floor.
Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I yield myself up to 12 minutes of the time allocated to the minority, in opposition to this nomination.

The PRESIDING OFFICER. The Senator is recognized.

Mr. LIEBERMAN. Madam President, I rise regretfully in opposition to the nomination of Dr. Sheldon Hackney to be Chairman of the National Endowment for the Humanities. I do so without pleasure, may I say, because this nominee is, by all accounts, a distinguished scholar and a decent man. Indeed, I spoke to Dr. Hackney recently and found him to be as thoughtful, charming, and well-intentioned as his many supporters promised me he would be. But I have decided that I cannot in good conscience vote to support his nomination for this particular office.

The National Endowment for the Humanities and our great universities, including the University of Pennsylvania, share an important and principled mandate: the pursuit of knowledge through the unfettered expression of facts, opinions and values, disciplined only by the requirement that such expression be open to debate and to scrutiny.

The first amendment of our Constitution embodies this principle with respect to government. For obvious reasons, our private universities have no such constitutional counterpart. We must rely primarily on the steadfastness to this principle by our universities' leaders for its preservation and for its vitality.

History is unfortunately replete with examples of the damage that can result when members and leaders of univer-

sity communities, however well-intentioned, succumb to the pressures of the moment. The noble fight against Soviet communism led to the blacklisting of some faculty. The ignoble specter of racism and bigotry led otherwise honorable men and women in our academic communities to impose quotas—religious, ethnic, racial quotas—on the admission of students from various minority groups or prevented scholars who were members of those minority groups from becoming tenured faculty members.

We now look back on these and other periods with shame and remorse, as well we should. I am convinced that we will also look back on today's speech codes and similar examples of the rule of political correctness with that same shame and remorse. Speech codes, however well-motivated, violate the principle of free speech and are ultimately patronizing because they suggest that the targets of offensive speech are incapable of confronting that offensive speech, of fighting its insensitivity or intolerance or ignorance directly by refuting it. In fact, the very effort to explore the meaning, motivation, and effect of specific expressions of speech in a judicial setting has, in my opinion, a chilling effect on university communities and takes us down a path that can lead to no good.

So, too, obviously, do attempts to explain or justify attempts to prevent the distribution of unpopular opinions and ideas.

And that brings me now to these two episodes at the University of Pennsylvania during this past spring.

In one, a group of students who did not like the tone and content of a series of columns that had appeared in the student newspaper, the Daily Pennsylvanian, took it upon themselves to confiscate 14,000 copies of one edition on a given day of that newspaper before it was distributed.

Instead of condemning that act in unequivocal terms for what it was—an outrageous assault on freedom of speech, freedom of the press, and a criminal act, namely, the theft of newspapers that did not belong to them—instead of doing that, Dr. Hackney's immediate reaction was to express sympathy with the students' frustration that led them to steal the newspapers. That is nonsense and, sadly, it is nonsense that, according to a column by Nat Hentoff in this Saturday's Washington Post, is being repeated at too many of our great universities across the country today.

Dr. Hackney did pay tribute in his statement to the preeminence of free speech in our society. But as I read that statement, that elevation of free speech was smothered in a statement that was otherwise loaded with the kind of Orwellian truisms on the so-called conflict between free speech and diversity that also have become too common on our campuses.

Sixteen professors at the University of Pennsylvania's Law School saw this. They understood the need for a statement of unequivocal clarity on this event; namely, the theft of these newspapers. They spoke out. I applaud them for it, and I ask unanimous consent that a copy of their public statement, their letter, be printed in the RECORD.

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

ON REMOVAL OF DPs

(The following was submitted under the title "Open Letter to President Hackney.")

The undersigned are members of the Law Faculty. We believe that the deliberate removal from circulation of 14,000 copies of The Daily Pennsylvanian calls for us to state three points with unequivocal clarity.

First, the removal of the newspaper because it published writings by one columnist which some students found offensive was a flagrant violation of freedom of thought and freedom of discussion. It was a direct denial of the principle which is most basic to the University's mission. It was conduct which cannot be excused or tolerated.

Second, the fact that the newspapers were confiscated as an act of protest cannot excuse it or make it any less tolerable. Those who disagree are, of course, entitled to protest, but not be attempting to silence those with whom they disagree.

Third, the important University values of diversity and open discussion were not in conflict here. The offensive columns in no way prevented the University from carrying out its policy of diversity and its many programs to promote understanding.

Removal of the newspapers struck at the heart of the most fundamental diversity which the University should foster—diversity of thought, views and expression. It may well be that the University has not done all that should be done to promote racial diversity. That must occupy a high place on the continuing agenda. But we deserve democratic values if, in our efforts to promote that diversity, we chill diversity of expression.

Clyde W. Summers, Jefferson B. Fordham Professor Emeritus.

Stephen B. Burbank, Robert G. Fuller, Jr. Professor.

Colin S. Diver, Dean and Bernard G. Segal Professor.

William B. Ewald, Assistant Professor.

Michael A. Fitts, Professor.

Frank I. Goodman, Professor.

Robert A. Gorman, Kenneth W. Gemmill Professor.

John O. Honnold, William A. Schnader Professor.

Leo Katz, Professor.

Seth F. Kreimer, Professor.

A. Leo Levin, Leon Meltzer Professor Emeritus.

Richard G. Lonsdorf, Professor of Psychiatry and Law.

Charles W. Mooney, Jr., Professor.

Stephen J. Morse, Ferdinand Wakeman Hubbell Professor.

Edward B. Rock, Assistant Professor.

Edmund B. Spaeth, Jr., Senior Fellow.

Mr. LIEBERMAN. Madam President, as an example of the slippery slope, the dangerous path down which these proceedings can go, I ask unanimous consent to print in the RECORD excerpts from the report of a panel of university

administrators appointed to study the theft of those copies of the Daily Pennsylvanian on April 15, 1993.

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

[From the Wall Street Journal, July 26, 1993]

DOUBLETHINK AT THE UNIVERSITY OF PENNSYLVANIA

Following are excerpts from the report of a panel of University of Pennsylvania administrators appointed to study the theft of one entire press run of the student newspaper. The papers were seized all over campus by black activist students opposed to The Daily Pennsylvanian's editorial content.

The report, which criticizes security guards, absolves the students of any wrongdoing—except failure to show I.D. cards. The panel analyzed what supposedly transpired at each of the campus sites involved.

A related editorial appears today.

INDIVIDUAL INCIDENTS ON APRIL 15, 1993

1. Biomedical Library/Johnson Pavilion (6:52 a.m.): Incident involving two students and two officers responding to a call from a School of Medicine security guard.

The panel found that one officer behaved in a discourteous manner toward the students by ordering them to leave before determining who they were or giving them an opportunity to explain their presence. The panel found that his actions violated Section 8.4.02 of the "UPPD [University of Pennsylvania Police Department] Policies and Procedures Manual" and should be reviewed by his supervisor for possible disciplinary action.

The panel found that the Medical School security guard behaved appropriately by contacting the UPPD.

The panel recommended that all security personnel receive training on working and interacting with people from diverse backgrounds. This training should include information about the diversity of the Penn community and the expectation that all members of the community should be treated with civility and respect regardless of race, color, sex, sexual orientation, religion, national or ethnic [sic] origin, age, disability, or status as a disabled or Vietnam era veteran.

2. Blockley Hall/Johnson Pavilion (7:48 a.m.): Incident involving two students, one Medical School security officer, one Medical School Supervisor of Security, one security officer . . . and four police officers responding to a call to UPPD that "A black male at Blockley Hall tried to take all the DP's [Daily Pennsylvanians]."

The panel found that one officer behaved in an unprofessional manner in violation of Section 8.4.02 of the "UPPD Policies and Procedures Manual" by cursing at the student and used excessive force . . . by striking the student with his baton. The panel also found that the officer failed to conduct a proper and thorough investigation because he neglected to interview the security personnel who were in pursuit.

3. David Rittenhouse Laboratories (8:20 a.m.): Incident involving two students, four officers, and the UPPD dispatcher. When two officers stopped the students carrying a large trash bag outside of DRL, they were informed by the students that this was a protest action.

The panel found that the responding officer . . . violated Section 5.22.0 of the "UPPD Policies and Procedures Manual" by not requesting that a supervisor be dispatched to the scene in response to a demonstration.

The panel found that the dispatcher violated UPPD Divisional Directive 92.08 by making a command decision without consulting a supervisor.

4. University Museum/Sports Medicine (8:16 a.m.): Incident involving two students, a Museum security guard, a Museum administrator and two officers. The Museum administrator pursued the students, who took the DP's from Kress Gallery, and caught up with them in Weightman Hall, where he made a "citizen's arrest" and detained the students.

The panel found that the Museum administrator's actions in pursuit of the students were inappropriate after they left the property of the University Museum and not in accordance with the authority and responsibility of his job functions. His actions should be reviewed by his supervisor for possible disciplinary action.

The panel found that the students should have shown their Penn cards.

In summary, the panel concluded that once the incident occurred at DRL [David Rittenhouse Laboratories], the UPPD should have recognized that the removal of the DP's from at least three different locations was a form of student protest and not an indicator of criminal behavior. According to the University's "Emergency Procedures Protocols" . . . the UPPD should have contacted the Office of the Vice Provost for University Life as soon as it recognized that the students were involved in a form of protest. Once the VPUL was notified of the protest, Open Expression Monitors would have been dispatched to observe and monitor the students' actions, in compliance with the existing Open Expression Guidelines. Since this act was a form of protest and not a criminal offense, it would have been more appropriate for Open Expression Monitors, not police officers, to mediate and attempt to resolve any further conflicts that resulted from the removal of the DP's. The Open Expression Monitors could have informed the students about the Open Expression Guidelines, notified them if their actions violated the Guidelines, and identified students who violated the Guidelines.

RECOMMENDATIONS

It is vital that all UPPD personnel receive additional training about appropriate responses . . . to student demonstrations and protests. This training must include extensive information on the University's Open Expression Guidelines [and] the role and responsibility of Open Expression Monitors.

The UPPD Policy on handcuffs, Section 5.7.06, should be reviewed . . . to ascertain if there are circumstances when it may be inappropriate to handcuff detainees . . . The application of any newly implemented policy should be monitored . . . to ensure that the policy is applied consistently, is non-discriminatory, and has no adverse impact on any group of people. After the policy is implemented, data should be maintained by the Department on the race and sex of individuals handcuffed, nature of offenses, and reasons for handcuffing.

As an example, in going from episode to episode, describing students taking the newspapers, being seen by security officers of the university:

The panel found that one officer behaved in a discourteous manner toward the students by ordering them to leave before determining who they were or giving them an opportunity to explain their presence. The panel found that his actions violated section 8.402 of the

"University of Pennsylvania Police Department Policies and Procedures Manual" and should be reviewed by his supervisor for possible disciplinary action.

Another incident in which they describe a museum administrator, two officers and a security guard saw students taking these newspapers from a university art gallery, caught up with them in a neighboring building, pursuing them, where one made a so-called citizens arrest and detained the students. And I quote:

The panel found that the museum administrator's actions in pursuit of the students were inappropriate after they left the university museum and not in accordance with the authority and responsibility of his job functions. His actions should be reviewed by his supervisor for possible disciplinary action.

No mention of the fact that we have here a university official who has just seen students—I do not know whether he was able to identify them—at that point running off with something that did not belong to them, a large number of copies of the newspaper. Finally, and I quote again:

In summary, the panel concluded that once the incident occurred at David Rittenhouse Laboratories, the University of Pennsylvania Police Department should have recognized that the removal of the Daily Pennsylvanians from at least three different locations was a form of student protest and not an indicator of criminal behavior.

I just disagree with that and again present it as evidence of the problems that occur when we do not give freedom of speech the absolute accord that it deserves.

The second episode this spring, again showing while the speech clauses in the theory of their formulators may be reasonable efforts to promote civilized discourse, in application they are not only unworkable but destructive—in the second episode a group of students in one of the dormitories shouted at another group of students who were celebrating noisily outside the dormitory late one night. Some of the comments shouted out, it is alleged, were obnoxious; some, it is alleged, may have included racial epithets. Only one of the students in the dormitory owned up to shouting anything.

Now, again, obnoxious statements are, unfortunately, not atypical of late-night shouting on college campuses. But here, because of this speech code, the full machinery of the University of Pennsylvania speech code came into play. Complaints were actually filed by the students who had been allegedly making noise against the one student who acknowledged that he had shouted out the window. He was subjected to an investigation of his alleged violation of the University of Pennsylvania speech code.

At an early stage of the proceeding, after an initial investigation by one member of the investigatory panel—I gather a faculty member—the student

was effectively offered a plea bargain. I am taking a little bit of liberty in using the term plea bargain, but a suggestion was made to him that if he agreed to go through sensitivity training the complainants would probably drop the complaint and it would all be over.

That just should not happen at a university community, no matter how outrageous a statement. The outrageousness of a statement should be confronted with facts or by simply walking away and not giving any heed to those statements, not by creating a mechanism which had an investigator suggest to this student that if he goes for sensitivity training the complaint would be withdrawn.

He, the student, refused that suggestion. Ultimately, the complainants decided not to pursue their complaints and that case has ended. But, unfortunately, it again illustrates the destructive nature of these codes, which require a judicial-like setting to evaluate the nature of speech—which is the beginning of a problem right there in our society—as to content and meaning, and require a panel or judicial tribunal to determine whether that speech should be punished or not.

A free society, Madam President, cannot countenance the establishment of such judges, no matter how well-intentioned, of what we or our children at universities can or cannot say. That, as I have said, is a slippery slope all of us should have the instinct not just to avoid but to condemn clearly and unequivocally.

In response to criticism in the Wall Street Journal of his behavior in these cases, and particularly in this case I have just described, Dr. Hackney wrote a letter to the Wall Street Journal this spring, and again in it I think we see that he is well intentioned but ultimately I think too ambivalent and off point on the critical role and respect we should give to free speech. Dr. Hackney says:

Freedom of expression is the paramount value at Penn and we are unwavering in our commitment to protect it. To that end we have well-established policies to protect open expression, and we have very deliberate and fair procedures for judging alleged violations.

Then he goes on to say:

Penn is a special kind of community. Not only does it put the free exchange of ideas at the core of its being, but it strives to ensure no member of the community is prevented from full participation in those debates by intimidating and abusive racial slurs intended only to wound, rather than to enlighten.

Once we begin to strive to ensure that no member of the community is prevented from full participation by being intimidated by speech, we are on the road to censoring speech and undercutting the basic freedom of a university community.

Madam President, I ask that the full text of Dr. Hackney's letter to the Wall

Street Journal be printed in the RECORD.

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

LETTER TO THE EDITOR

I write to correct the unfortunate impression left by your editorial of April 26 "Buffaloed at Penn," about a student disciplinary case now pending the University of Pennsylvania. Although I am not permitted by federal law or university policy to discuss the facts of the case, I can put in into context.

Freedom of expression is the paramount value of Penn, and we are unwavering in our commitment to protect it. To that end, we have well-established policies to protect open expression, and we have very deliberate and fair procedures for judging alleged violations.

Penn is a special kind of community. Not only does it put the free exchange of ideas at the core of its being, but it strives to ensure no member of the community is prevented from full participation in those debates by intimidating and abusive racial slurs intended only to wound, rather than to enlighten.

Whether a student has engaged in racial harassment according to our very narrowly defined policy is now up to a judicial panel of students and faculty to determine. If errors are made, ample avenues of appeal are available after the judicial panel has reached its conclusion.

Those who think they know what the outcome should be are impatient with the process, but that process must be allowed to run its course.—Sheldon Hackney, President, University of Pennsylvania.

The PRESIDING OFFICER. The Chair might advise the Senator he has spoken for 15 minutes and 53 seconds.

Mr. LIEBERMAN. I thank the Chair. I ask unanimous consent for an additional 5 minutes to conclude my statement.

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

Mr. LIEBERMAN. Madam President, to sum up, let me say this. Speech obviously can be noxious and it can be hateful. In such circumstances, it is perfectly appropriate—indeed, it is essential—for members of the university community and especially the leader of a university community, its president, to speak out and confront those ideas. That is the proper role of education and of educators. But it is not proper for an educator, for a university president to condone, tolerate or seek to put in perspective either the suppression of free speech, as evidenced by the criminal act of stealing newspapers, or the chilling discouragement of free speech in a proceeding that presumes that certain kind of offensive words must be sanctioned and punished as evidenced in the second case that occurred this spring.

Madam President, speech codes and other attempts to suppress what is not politically correct, what is not politically fashionable at a given moment in our history simply cannot be tolerated. And in our time, they must be stopped,

they must be eliminated, they must be withdrawn from our university life.

Leaders in that battle should be leaders of the university community, the presidents of our universities. I respectfully suggest that in this battle there really is no room for equivocation or compromise. The president of a university is the trustee of a great and proud tradition of freedom in university communities. That goes back through the course of Western civilization, and has been upheld with intensity, force, and zeal, particularly in America's university system.

Being a university president is a great privilege. And with it comes great responsibilities.

I fear that if we overlook the violation of those responsibilities, we will have only ourselves to blame for the further diminishment of one of the most fundamental principles upon which this society rests. So, although I know that in most regards Dr. Hackney was, by the testimony offered by Senator WOFFORD and others, a superb president of the University of Pennsylvania, and while I accept the fact that he is a distinguished scholar and certainly a decent man, I believe that the same critical principles that I have discussed, the primary principle of freedom of speech which distinguishes our society, is at the heart of the work of the National Endowment for the Humanities which Dr. Hackney has been nominated to head. And because I am profoundly troubled by the way in which he presided over the University of Pennsylvania during the time when it adopted and enforced speech codes, and because I am profoundly troubled by the ambivalence of his response to the theft of those 14,000 copies of the college newspaper, I shall vote against the nomination of Sheldon Hackney to lead the National Endowment for the Humanities.

I thank my colleagues for their charity in the time given to make this statement.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, I think the fact that we have the nomination of Dr. Hackney and Ms. Acheson both before us for consideration, Dr. Hackney to head the National Endowment for the Humanities and Ms. Acheson to be an Assistant Attorney General, it is a sad commentary on the partisanship that prevails within these committees. If this had taken place under a Republican President with both of those nominees being Republicans, there is no way in the world they would have come to this floor. On Dr. Hackney, they would have said he trampled all over the freedom of speech. On Ms. Acheson they would have said, "Oh, she belonged to a club that discriminated and only resigned

just in time when she was nominated." Those are the exact facts. She belonged to the country club in Brookline for many years that clearly had discriminated.

It seems to me very, very unfortunate that we have this double standard existing within the committees because we all served during the years when President Reagan and President Bush were nominating various candidates. An entirely different standard, different than that applied to Ms. Acheson and Dr. Hackney, applied.

I am going to vote for both of those nominees. I do not think the transgression that Dr. Hackney made was something that we can applaud by a long shot. But I have heard from many who have known him for many, many years and do not think that one or two transgressions, if you would, should cause his nomination to fail.

So I am going to give them the benefit of the doubt. I do not think our Republic is going to collapse if Dr. Hackney is nominated, and indeed many people think he is an excellent individual.

Ms. Acheson, likewise. I will support her because I think that somebody who belongs to a club that perhaps she was not very active in, and a club in some fashion discriminates—I do not think that makes that person a bigot. But I think we ought to have the same rules apply to everybody who comes before us for a nomination.

Madam President, I would like to go on and say I think this whole nomination process has gotten out of hand. On the Environment and Public Works Committee we deal with the nominees to sit on the board of the TVA. The TVA is hardly an organization that ranks up in the top in sensitivity or the disclosure of national secrets of some fashion. Yet, the background checks of both of those individuals that came before us, the FBI said they spoke to 46 different people—46 different people for a nominee to be on the board of the TVA. The system has gone haywire around here.

I would like to point out, Madam President, that I was nominated by the President to be Secretary of the Navy in 1969, January. That was a new administration that had just come in January 1969. That was an administration of a different party. The previous party had been that of President Johnson, the Democratic Party. And I was processed, investigated, confirmed, and sworn in by January 31.

The new Secretary of the Navy, chosen under exactly the same circumstances, a new administration coming from a different administration from the prior one, a different political party, was sworn in the end of July. That is 6 months' difference. Indeed, there is a paltry number of individuals sworn into office over at the Pentagon right now. And so it is through all of the departments.

I just think that we have to sit back and review what we are doing. Walter Mondale confirmed by the Senate to be Ambassador to Japan on July 30, last Friday. Walter Mondale who served as U.S. Senator, who served as a Vice President of the United States, what better qualifications do we want? Yet, it took to get him through the process, the FBI checks, all that goes with it, up until July 30, 6 months—more than 6, 7 months after this administration came to office.

So, Madam President, I would hope that everybody would say to themselves the system has gone haywire, that a nominee, let us look at him, those that we know something about. It does not mean we have to have 47 background checks by the FBI. Walter Mondale, we all know him. He has certainly kept the secrets of the Nation and carried out his duties with superb form during the years that he was Vice President.

Happily he finally was confirmed. In all fairness, it was not the Senate that slowed that up. It took forever to get the nomination up here. I do not know what the clearances were that they sought. Clearly as Vice President he had every clearance known to man, every security clearance.

So, Madam President, I would hope that not only in these cases we would move forward with dispatch, and get the debate done. I think 5 hours of debate on Mr. Hackney is going beyond something that is reasonable. There are plenty who have thoughtful views on him, pro and con. Let us hear them. Let us get on with the vote. But in the future, let us not have 47 interviews by the FBI for a nominee for the TVA authority.

I thank the Chair.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President,

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.

That famous celebration of tolerance was written by Justice Robert H. Jackson, in a 1943 Supreme Court decision, *West Virginia Board of Education versus Barnette*, which held unconstitutional an attempt to compel public school students to salute the flag.

I have used this standard, the *Barnette* test of tolerance, to judge several of the nominees President Clinton has chosen to join his administration.

Despite my usual deference to any President in choosing his administration, including people with whom I profoundly disagree, like Robert Reich, the Secretary of Labor, Donna Shalala, the Secretary of Health and Human Services, and Jocelyn Elders for Surgeon General, I reject those nominees

who fail the Barnette test—those who are inch tolerant of conflicting views, who have used or are likely to use political power to punish their opponents or to pursue policies destructive of the social fabric which binds us together as Americans or who are indifferent to constitutional principles.

President Clinton, regrettably has sent the Senate four such nominees, Roberta Achtenberg, Lani Guinier, Thomas Payzant and now Sheldon Hackney, the President's choice for the National Endowment for the Humanities.

Three well-documented and publicized events during Dr. Hackney's tenure at the University of Pennsylvania illustrate his lack of potential for effective leadership of the National Endowment for the Humanities, a position entrusted with more than \$150 million a year in taxpayer money to spend for the advancement of the humanities.

In each case, Dr. Hackney showed an alarming willingness to act or to fail to act only in conformance with the most extreme academic doctrine of political correctness and totally inconsistent with the very qualities of courage, balance, reason and fairness, which should mark the humanitarian spirit.

Dr. Hackney has time and time again shown indifference when an advocate for the truth was needed, silence when a spokesman for justice was needed, an appeasement where leadership was required, and a willingness to persecute where courage was required.

Sheldon Hackney falls miserably short of the qualities required of our Nation's chief spokesman for the humanities.

Take, first, the university's infamous paper chase.

On the night of April 15, a number of black students engaged in a campus-wide coordinated assault to retrieve 14,200 copies, the entire press run, of the campus newspaper, the Daily Pennsylvanian. Their target: A column written by a conservative student writer, Gregory Pavlik, the paper's only conservative among a legion of liberals, who had written articles critical of affirmative action and Martin Luther King.

In fact, the university administration informed Mr. Pavlik in February that based on his newspaper columns, he was charged with 31 violations of the university's infamous speech code and was under investigation for racial harassment.

The plot to steal the newspapers as an act of protest was conceived when the university decided to drop the charges against Mr. Pavlik. This was apparently the only instance in which the proposed use of the university's speech code against a nonpolitically correct speech was extreme enough to bestir Sheldon Hackney to action. But he equated the right to publish an opinion with the right to destroy that publication.

At this point, Madam President, I ask unanimous consent that the testimony of Mr. Pavlik be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. GORTON. This destruction of a newspaper run was such a violation of freedom of expression as to cause most students to anticipate total condemnation by the university administration. Instead, in words that would send chills down the spines of those who value the first amendment to the Constitution, Sheldon Hackney responded with these immortal words:

Two important university values—diversity and open expression—seem to be in conflict.

He also expressed sympathy with the concerns of those who confiscated the paper and referred to the theft as simply papers which "were removed from their regular distribution points"—a definition perfect for a dictionary of politically correct language.

Mr. President, Dr. Hackney's comments about this incident reflect what columnist Richard Cohen accurately described as "Sheldon Hackney's dangerous balance."

Shortly thereafter, several alarmed law professors at the university wrote Hackney:

The important University values of diversity and open expression were not in conflict here. The offensive columns in no way prevented the University of carrying out its policy of diversity and its many programs to promote understanding. Removal of the newspapers struck at the heart of the most fundamental diversity which the University should foster—diversity of thought, views and expression.

Rather than condemning this grievous violation of the first amendment and listening to voices of balance and reason, Sheldon Hackney followed a currently popular course of action on the part of many university presidents these days as they are accustomed to doing in the face of criticism. He appointed a blue ribbon panel to investigate the events of April 15. He chose silence when a spokesman for justice was needed.

Recently, that blue ribbon panel completed its deliberations. Its findings are noteworthy because they illustrate the impact Sheldon Hackney has had on his university's ability to pursue reason and to love justice. The report found that the confiscation of the newspaper run was not criminal, but rather a legitimate form of protest and so absolved the students of any serious wrongdoing. In fact, the report criticized security personnel who tried to prevent some of the thefts and recommended sensitivity training for the officers involved with the "protest." The report concluded by recommending that:

It is vital that all [university police] personnel receive additional training about ap-

propriate responses * * * to student demonstrations and protests. This training must include extensive information on the University's Open Expression Guidelines [and] the role and responsibility of open expression Monitors.

At the University of Pennsylvania, when one group stole thousands of newspapers, the police who attempted to frustrate the theft were scolded, and one was suspended for failing to conduct an Orwellian enforcer of campus political correctness. One may question whether a fraternity, if its members found a liberal column offensive and conducted a similar raid on the campus newspaper, would have been immune to condemnation from the university President. If the college Republicans coordinated such an assault on fundamental constitutional principles based on their anger and offense of the Republican Party, would that too be labeled a "protest"? Fat chance.

Madam President, Sheldon Hackney's inaction and abdication of leadership in this case can rightly be contrasted with his remarks several years later when Louis Farrakhan was invited to speak at his university. At that time, he told a university audience:

We can't have free speech only some of the time, for only some people. Either we have it, or we don't.

Madam President, either Dr. Hackney has since decided we don't have free speech, or he has artfully calculated the occasions on which he is willing to defend the first amendment.

For instance, a year after his Farrakhan speech, when Dr. Hackney became an outspoken advocate for the National Endowment for the Arts during its controversial funding of Robert Mapplethorpe's pornographic display, he criticized NEA critics at a 1990 conference an academic freedom and artistic expression by stating:

My own career is built on knowing when and when not to compromise * * * I generally seek compromise as a virtue, but I get very nervous when fundamental principles are at stake.

Madam President, what boldness and courage it must have taken to denounce the senior Senator from North Carolina at a conference of academics. But where was such boldness and courage in defense of the first amendment after the campus newspaper raid? When, if at all, has Dr. Hackney found an attack on conservatives an occasion at which fundamental issues were at stake? It is precisely his well-recognized capitulation to the politically correct and selective defense of fundamental principles that make this Senator, and the American taxpayer, unconvinced and skeptical of his dedication to open and free expression for all.

Mr. KERREY assumed the chair.

Mr. GORTON. Mr. President, under the leadership of Sheldon Hackney, the University of Pennsylvania became a model of political correctness when it

instituted one of the Nation's more absurd speech and conduct codes. According to author of "Illiberal Education," Dinesh D'Souza:

Examples of violations of the University President's Policy on Harassment, for which the penalty ranges from a reprimand to expulsion, include "the use of derogatory names," "inconsiderate jokes," and even "misdirected laughter and conspicuous exclusion from conversation."

Such nonsense is worth harpooning until it is taken seriously by the university administration that promulgated it. Ask Eden Jacobowitz, an Israeli born freshman at Penn who spent his freshman year at college learning a frightening lesson in prosecution and coercion by the administration of Sheldon Hackney.

Late one night last January, Mr. Jacobowitz and others in his dorm were disturbed by a loud group of shouting and celebrating black sorority women outside their dormitory windows. While several racist slurs were hurled at the women, Mr. Jacobowitz shouted "Shut up you water buffalo!" When confronted by university officials responding to charges by the black women that the university's code had been violated, Jacobowitz was the only one in the dorm who admitted to have shouted at the women, but vigorously denied that the term "water buffalo" was used as a racist comment.

Mr. President, at this point I ask unanimous consent that Mr. Jacobowitz' testimony on this matter be printed in the RECORD.

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

STATEMENT BY EDEN JACOBOWITZ, FRESHMAN AT THE UNIVERSITY OF PENNSYLVANIA, JUNE 25, 1993

Mr name is Eden Jacobowitz, and I am a freshman at the University of Pennsylvania. I am here this morning to tell my story and explain to the American people why I believe Sheldon Hackney's nomination should receive very close scrutiny by the U.S. Senate. First of all, I'd like to say that as an eighteen year old, I voted for the first time this year. I cast my ballot for Bill Clinton, believing, like many others that he was a new Democrat and would bring real change to America. I voted for Bill Clinton to help protect freedom of speech and expression in our country and especially on college campuses.

My story like so many others at Penn reflect the university's and Mr. Hackney's tendency to restrict free speech whenever the voice is not speaking correctly in their view. That is—politically correct in their view. As you probably already know on Wednesday, January 13, I shouted "Shut up you water buffalo!" at a group of sorority women who were stomping their feet, shouting and screaming outside my dormitory window at approximately 11:30 p.m. I later learned that because of this truly innocent response to disruptive noise, racial harassment charges had been filed against me. I was in complete shock that anyone had taken my words racially, and I made it clear to the university's judicial officers and to Dr. Hackney that the race of the women was of total indifference to me. I explained that

as an Israeli-born orthodox Jew raised on Hebrew, the term "water buffalo" derived from the Hebrew word "behemah" which translates literally into "water oxen" and simply means "foolish person" in Hebrew slang. I do not understand how a university which prides itself on diversity, did not accept my culture.

I worked within the University Judicial System and presented the testimony of many witnesses who had heard what I shouted and agreed that the words had absolutely no racial meaning. I even presented testimony from professors at the university who are experts in African American culture and linguistics, stating that the term was not a racial slur. But it soon became obvious to me that all the evidence in the world could not help me. It did not matter that "water buffalo" had absolutely no racial meaning because the university had chosen me as a scape-goat for those who shouted the truly racist words that night—words that I did not even know had been shouted.

It took four and a half months, or 131 days for the charges to be dropped and Dr. Hackney knew the facts of this case for 130 of those painfully difficult days. I met with him on January 15, were I told him everything that had transpired up to that point. I told him everything that I had said, and also informed him that on the night of the incident the complainants came to my dormitory room and shouted, "You white boy! We are going to get you expelled from school."

But neither President Hackney, nor his campus thought police found it strange that I was under investigation for racial harassment. I did not file counter charges, because I believe in the complainants' rights to freedom of speech, even, indeed especially, when they were angry and annoyed. Since January 13, all I wanted to do was to meet with the complainants and explain to them that I had absolutely no racial intentions, and apologize for shouting something that was at worst, a little rude. But neither the University's Judicial officers nor Dr. Hackney put any real effort into creating this type of friendly and constructive meeting between the complainants and me.

The University of Pennsylvania's Judicial Officers also committed many violations of their policies and procedures at my expense. As outlined in my testimony, at different points in the absurd proceedings the University employed a double standard, placed a gag order on me, prohibited one of my witnesses from testifying, and attempted to create a hearing on a date in which none of my witnesses could be present. My advisor notified President Hackney of every severe violation that had been committed by University Judicial Officials, yet, he did not find just cause for intervention even though it was obvious that I was being tried by a kangaroo court.

As stated in my Senate testimony, on May 28, after the charges were dropped by the complainants, (not the University) President Hackney sent a disturbing letter to everyone who had written to him. In his letter, President Hackney tried to convey that many people "do not share the same sense of crisis and calamity that has been so much in the news." This message is grossly inaccurate. Many noble individuals, primarily alumni, have written me letters expressing great concern, and many have felt compelled to withhold donations from the university. Most students, black and white, including those who organized a free speech rally at the university in early May, have been disgusted by the university's mishandling of the situation.

It is abominable that President Hackney does not share this sense of crisis. Because of serious racial tensions on campus, which should definitely concern President Hackney, an innocent freshman had an entire semester ruined by unjust charges. The Judicial Officers attempted to ruin my future by creating a judicial record for me and adding notations to my transcript. These damaging and very serious charges hung over my head from January to late May and created extraordinarily painful circumstances. The abuses of a grossly imperfect judicial system and the unjust suffering of a student should certainly concern a university president.

President Hackney has continuously asked to allow "the process to run its course." But I gave the process over four months, far more time than necessary, to realize that "water buffalo" was not a racial epithet. This process has taken away something irreplaceable—a semester of my freshman year. I was supposed to learn how to deal with college students this year, not college Judicial Officers.

Finally, I would like to make it clear that the real issue here is not racial harassment. The real issue is freedom of speech. I established my innocence from the beginning. The reason this case was able to drag on so long is because the university has a speech code limiting the Constitutional rights of students. By the standards of that speech code, I should have been found innocent. But because it was in the hands of incompetent and cruel judicial officers and an apathetic University President, my future was almost ruined.

Thank you.

Mr. GORTON. However, speech code enforcers interrogated Jacobowitz, asking him, among other things, whether he had any racist thoughts that night, and assumed that the term "water buffalo" was a racist epithet. Jacobowitz quickly understood that the administration intended to pursue this prosecution to the fullest extent possible. Two days after the incident, a distraught Jacobowitz approached Hackney and appealed to the university president for reason and fairness. Sheldon Hackney now doesn't remember this appeal. At that point, Dr. Hackney could have intervened and brought the matter to a close. Instead, he did nothing, and the judicial officer continued to pursue the case despite findings by several university language experts who concluded that the term "water buffalo" was, as Jacobowitz stated repeatedly, derived from the Hebrew slang word "behemah," meaning "foolish person."

As the semester and these proceedings progressed, Dr. Hackney continued to distance himself from the controversy as it began to gain national attention and scorn for the university. According to Jacobowitz' testimony Dr. Hackney was aware of the Jacobowitz complaint about the irregularities in the judicial proceedings, but that there was no cause for intervention even though he was now well informed about everything that transpired, though at the time he cannot remember Mr. Jacobowitz' anguished personal appeal shortly after the incident.

At the end of May, just as a skeptical local and national press were writing editorials blasting the idiocy of the case against Jacobowitz and the irresponsibility of the Hackney administration, the sorority women who had brought the charges of racial harassment called a press conference to announce that they were dropping all charges. Their explanation:

The media coverage deprived us of our right to an impartial panel, and therefore, a fair hearing. Realizing that justice could not be served, and in efforts to clarify our position, we have decided to formally withdraw our grievance.

Jacobowitz responded with the following statement:

President Hackney has continuously asked to allow "the process to run its course." But I gave the process over four months, far more time than necessary, to realize that water buffalo is not a racial epithet. * * * The only reason this case was able to drag on so long is because the university has a speech code limiting the constitutional rights of students * * *

Mr. President, no one here envies the often impossible task of a modern university administrator, but that task is made more difficult by a failure of character and leadership in difficult and controversial times. When his university's speech code was implemented by out-of-control zealots of political correctness, all part of his administration, Sheldon Hackney should have intervened and stopped the nonsense. Mr. Hackney, was, indifferent when an advocate for truth and justice was needed.

In his testimony before the Senate Labor and Human Resources Committee, several of Dr. Hackney's remarks indicate some confusion over his ability to intervene. At one point in describing the student level judicial system by which Mr. Jacobowitz was raked, he said:

* * * the student judicial system at Penn is set up to be independent of me; I am not involved in it, nor is the provost.

Later, Senator COATS from Indiana asked Dr. Hackney:

Was there any point in that process where your authority as president of the university came to bear in the decisions that were made up to the point where the complaint was dismissed?

Dr. Hackney responded:

My role was first to try to get the case to a hearing panel, because I was relatively confident then that it would come out right, so I did state my opinion about that to the judicial administrator that it would be good if this case could be heard by a panel this spring. I don't think that was intervening in the substance of it at all; it was just an admonition to him.

With regard to the time at which the student level proceedings were completed and the case was sent to a faculty-student panel, Dr. Hackney stated:

So charges were brought after an investigation, and at that point the procedure was

off, and I was not in a position to intervene although I was urged to do so throughout the spring. I think it would have been perhaps better for me to have intervened in an extraordinary way, but it would have undermined the whole judicial system, and it would have been a terrible thing, I think for the university. So I did not do that, and I think that was still the correct decision.

Senator COATS then asked a question relating to the early dismissal of charges in the case of Gregory Pavlik and the delay in justice for Mr. Jacobowitz. Senator COATS asked:

What was the difference between this case and Mr. Jacobowitz's case, and why would one be resolved within days and the other take six months; and who interceded in Mr. Pavlik's case to bypass the process?

Dr. Hackney responded:

Yes, I did play a role there, but it was completely appropriate, and that I will leave for you to judge. Professor Cours did call me when Mr. Pavlik had been approached by the judicial inquiry officer (JIO), and Professor Cours explained to me what was transpiring. It sounded to me absurd in the extreme that someone who wrote things in the student newspaper could even be deemed to be in violation of this policy, that there was no relationship at all between the policy and someone who expresses opinions in the newspaper. * * * My assistant then asked the JIO what was going on. This was during the investigation period. And I think the JIO reassessed the situation and saw it in a much better light and dropped the charges, which I think was absolutely appropriate.

So sometimes Sheldon Hackney intervened and sometimes he did not. But always the process was more important than the justice of the result.

In addition, Sheldon Hackney had no recollection of a distressed Jacobowitz, remember, appealing for his assistance in assuring a fair outcome.

In his testimony, Dr. Hackney stated:

I really did not know about the Eden Jacobowitz case until after it was in full cry, so I was not able to do anything about it.

According to Jacobowitz, after the charges were dropped by the complainants, Hackney wrote a letter inferring that many people do not share the same sense of crisis and calumny that has been so much in the news—reassuring words from a university president whose indifference inspired a college freshman to insist recently: "The damage Sheldon Hackney has done to me is immeasurable. * * * My future was almost ruined."

So, Mr. President, from his testimony several things are painfully clear: Sheldon Hackney had the right—I think he had the duty to intervene even at the student level proceedings. He had in fact intervened in the past to dismiss a case, and he certainly should have done so in the case of Eden Jacobowitz. Apparently, Mr. Hackney's decision to intervene rests on his finding that there was what he called "absurdity in the extreme." Perhaps mere absurdity was not sufficient grounds to intervene. Instead, Mr. Hackney chose

indifference when a spokesman for reason and fairness was needed.

A classic case of absurdity and hypocrisy by the Hackney administration was the politically correct pursuit and punishment of Prof. Murray Dolfman in 1984—a case which received no or little media attention. According to a university report investigating the incident professor at the University of Pennsylvania who taught in the traditional, hard-questioning, Socratic method to prepare his students for a future in the law:

Mr. Dolfman asked the class what Constitutional Amendment related to the concept of involuntary servitude. There was no response. Mr. Dolfman observed that if anyone should know the answer it would be the black students. He then asked the black students in the class * * * if they could recite the 13th Amendment. When none could do so, Mr. Dolfman asked one black student to stand and read the amendment out loud. Mr. Dolfman then expressed some surprise that while he, as a Jew and "former slave," celebrated Passover, the black students, whom he likewise called "former slaves," or "ex-slaves," did not celebrate the passage of the 13th Amendment.

What happened next was well-researched and discussed by Dinesh D'Souza, author of the 1991 book, "Illiberal Education." D'Souza wrote:

Shortly afterwards, a few minority students came up to Dolfman and accused him of racial insensitivity. A second charge against Dolfman was that he had once told a black student to change his pronunciations from "de" to "the." Dolfman said that he met with the students, and apologized if they had taken offense. "I told them that I understood and shared their concerns, that I am Jewish and during *seder* we pray: When we were slaves unto Pharaoh." Dolfman also pointed out that it would be important for students, in courtroom arguments in later years, to speak in a clear and comprehensible manner.

They seemed to understand, "Dolfman recalled, and the matter was dropped for a few months. But after that, during Black History Month, it was brought up again and again, Dolfman said," to illustrate just how bad things are at Penn.

The adrenalin generated by the Black History Month rhetoric brought about a demonstration of minority students, several dozen of whom occupied Dolfman's class and prevented him from teaching. "They read a document of indictment to my students," Dolfman said. President Sheldon Hackney met with Dolfman and asked to refrain from public comment, even to abstain from defending himself against accusations. Then Hackney joined the ranks of his accusers, telling the campus newspaper that conduct such as Dolfman's was "absolutely intolerable." Dolfman was pressured to issue what he termed a "forced apology," and to attend "racial awareness" sessions on campus. The university subsequently decided not to renew Dolfman's teaching contract for a year.

Dolfman is now back at Penn, a chastened man. "The message has been driven home very clearly," Dolfman said. "You can't open your mouth on these issues now without fear of being humiliated.

This case exemplifies the vulnerability of the politically correct cadres, including Sheldon Hackney, to the

double standards of their anti-intellectual world. In a clear violation of the campus conduct code, about 200 black students demonstrated and disrupted one of Dolfman's lectures without any accountability. In a clear violation of principles of academic freedom and due process, Hackney intervened in the Dolfman's inquiry, strongly advised him not to defend himself, and badgered him into an apology before the investigation was completed. Instead of providing leadership in the pursuit of academic freedom and fairness, Mr. Hackney pursued an agenda of political correctness and appeasement.

In some respects, this may have been the worst of all Sheldon Hackney's failures—a craven surrender to a mindless attack on a teaching method validated by centuries of success.

In his opening statement during his confirmation hearings before the Senate Labor and Human Resources Committee, Sheldon Hackney stated that:

Among the values that I hold dear is a belief that a university ought to be open to all points of view, even if some of those views expressed are personally abhorrent. * * * The university should belong to all of its members and not be the exclusive domain of any particular person, group, or point of view.

His presidency demonstrates that those views guide his actions only in easy cases. Indeed, it seems almost as if Shelby Steele, author of "Content of Our Character" had Sheldon Hackney in mind when he wrote:

Men and women who run universities—whites, mostly—participate in the politics of difference because they handle their guilt differently than do many of their students. They don't deny it, but still they don't want to feel it. And to avoid this feeling of guilt they have tended to go along with whatever blacks put on the table rather than work with them to assess their real needs. University administrators have too often been afraid of guilt and have relied on negotiations and capitulation more to appease their own guilt than to help blacks and other minorities.

Dr. Hackney's statement during this testimony before the Labor Committee that "Some of my best friends are members of the NAS," a moderate group of scholars opposed to the politically correct movement, recalls some of the historic statements of the least believable supporters of fairness and basic freedoms with respect to racial and religious minorities in the not at all distant past.

The Chairman of the NEH is entrusted with \$150 million of taxpayer money every year to make balanced, rational, and fair judgments in promoting the humanities, a desperate cause these days, through films, exhibitions, and publications. Hackney's lack of fortitude in the pursuit of intellectual honesty is a striking contrast to the straightforwardness his predecessor, former NEH Chair Lynne Cheney who wrote recently:

Balance is not just a passive task. You actually need to fight against a swift current

of political correctness. If you aren't anchored by a firm belief in fairness, you will quickly drift into the orthodoxy of the day, even with the best of intentions.

By his leadership at the University of Pennsylvania, Hackney has implemented and enforced a speech code that is in direct conflict with basic constitutional freedoms of expression; acquiesced to illegal behavior and condoned blatant violations of freedom of expression; stood by while an administration out of control pursued a ridiculous charge of racism and almost destroyed a young man's career; and presided over the hysterical pursuit and humiliation of a non-PC professor.

Taxpayers demand accountability in government. If Sheldon Hackney cannot accept accountability for his actions at the University of Pennsylvania, how can the Senate possibly expect him to be accountable to the taxpayers as NEH chairman? An editorial in the Philadelphia Daily News accurately rephrased this inquiry as follows:

Heading the National Endowment for the Humanities calls for genuine sensitivity (not alternately buckling to conflicting pressures), the ability to deal with delicate situations, and above all, profound respect for and insistence on free expression. Does that describe Sheldon Hackney?

No, Mr. President it does not.

There is nothing pleasant about criticizing a gifted and well-meaning man. However, having followed the events which unfolded under his leadership at Penn, I will vote against his confirmation and conclude by concurring with the eloquent remarks of Charles Krauthammer in his June 25 column:

Sheldon Hackney has had a distinguished academic career. He is a noted historian. He is a man of obvious good intentions. He is also, unfortunately, a perfect example of the failure of nerve—the failure of intellectual honesty, the failure to defend principle—that is the shame of American academic leadership. To elevate Hackney * * * to the chairmanship of the National Endowment is to endorse those failures.

EXHIBIT 1

Comments for the Senate:

I must say frankly, and from the start, that I am unequivocally opposed to the confirmation of the nominee Sheldon Hackney. I have witnessed the repression that occurs at the University of Pennsylvania both from a distance and also first hand. Under the administration that Hackney has personally crafted over the last twelve years, the community of the University of Pennsylvania is quite literally one that is subject to a reign of what can only be described as intellectual fascism. Individuals at Penn are systematically subject to threats and harassment under the auspices of "tolerance." While proclaiming the munificence of "diversity," the minions of Sheldon Hackney have made it their business to actively silence voices with which, for whatever reason, they disagree. Sheldon Hackney has by no means been in the dark with regards to what has happened at the university. In fact, he has been the principle architect of what the University of Pennsylvania has become.

My first encounter with the tactics of the Hackney administration occurred in Feb-

ruary 1993. I am an editorial writer for the Daily Pennsylvanian, a newspaper that is wholly independent from the school. I was doing investigative work for a column that was scheduled to run the next day. I contacted a prominent member of the Hackney administration to confirm details for my coming essay, which dealt with the issue of racial double standards at Penn. At the end of the conversation, I was told that if the information I brought up appeared in the paper, "you're dead." The column was subsequently published, and seven days later I was awakened at my home by a phone call from Catherine Schifter, the acting Judicial Inquiry Officer for the University of Pennsylvania. Ms. Schifter informed me that there were 31 charges of racial harassment filed against me based solely on the fact that I had written unpopular opinion, and that I was under investigation by the university. I asked Ms. Schifter why, and her only retort was, "you need to ask?" Then came one of the most Orwellian statements that I have ever heard. Ms. Schifter intimated to me that if I were to sit down in a session with the 31 students that had taken offense to my column and open a dialogue, the charges might be dropped. The thought of participating in a "hate session" to be accused of harboring incorrect thoughts and to be vilified by 31 angry students in order to be granted absolution for disagreeing with them is perhaps one of the most blatant and chilling attempts to stifle free speech and a free press that I have ever heard of. The alternative was to face a court system that could have rendered a decision of expulsion. According to his own administration in future conversations, Sheldon Hackney was fully aware of what was happening from the start.

This is not only a case of zealots trying to suppress free expression at the university, it was also a violation of the policies of the University of Pennsylvania. The university has a signed agreement with the paper that stipulates that no students will be prosecuted by the judicial system based on the content of their writing. This was willfully violated by the Hackney administration, with Hackney's knowledge. The University of Pennsylvania also has a policy called the Open Expression Guidelines which state that, "The freedom to voice criticism of existing practices and values are fundamental rights that must be upheld and practiced by the University in a free society." This too had to be willfully violated by the Hackney administration.

After the intervention of a prominent faculty member, I was told that the charges were going to be dropped, although it was a month before I was notified in writing that the investigation was going to be ended. In the meantime, I was then invited to a "multicultural" sensitivity seminar, where I would presumably confess my sins. Carrying a full engineering load and coping with the onslaught of the Hackney administration has been one of the least pleasant experiences of my life.

The next experience I had with the Hackney administration occurred when a contingent of campus radicals seized and disposed of nearly all 14,200 copies of the Daily Pennsylvanian, on the day that my last column of the semester ran. Of course one would expect condemnation of tactics that are so reminiscent of those used by Nazi brownshirts. Sheldon Hackney, however, was only bold enough to say that there existed a "conflict between open expression and diversity." He did not condemn the theft! I also am not sure why my opinions are not considered to be a part

of that vaunted diversity, as I am the only conservative writer on the paper. The other thirteen columnists were decidedly oriented to the left. Once again, and this time in person, the message of Hackney's regime was simple: If we disagree, you do not have the right to speak or think freely.

The nominee has sent out letters to those concerned saying that people do not know the whole story. This is correct. If people understood the gravity and depth of the intimidation and atmosphere of oppression that has been created, the whole story of what Hackney's administration has done, there can be no doubt that they would have reacted even more strongly than they have. Penn is a campus where students look over their shoulders before they speak, for fear of being overheard and disciplined. It is also a campus where friends whisper while walking from class to class, for fear a politically incorrect phrase will cause them to be detained, and reprogrammed.

The post of the National Endowment for the Humanities should be open to a qualified scholar who will proceed with good judgment and fairness. On these counts, based on personal experience, I know that Sheldon Hackney is not qualified. The damage he has done to me, and to the campus community is immeasurable. Sheldon Hackney is ready and willing to play favorites and to dump on those with whom he simply disagrees. Our university has no place in a free society, and Hackney's vision which shaped the university must not be extended to the country as a whole. Please consider carefully your decision, for your choice will not only shape national policy, it will help shape the policy of university's across the country.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. WOFFORD. The Senator from Rhode Island [Mr. CHAFFEE] called for nonpartisanship in regard to nominations such as this nomination.

I want to point out that whatever partisanship has been applied to nominations in the past, so far, until this afternoon, the process regarding the nomination of Sheldon Hackney has been one of extraordinary nonpartisanship.

I would like to believe that the Senator from Washington and the Senator from Connecticut, if they had been through our committee hearings with the long and careful probing of colleagues from both sides of the aisle, would have come to the same conclusion that all members of the committee came to, to vote in favor of Sheldon Hackney's nomination—Senator KASSEBAUM, Senator JEFFORDS, Senator COATS, Senator GREGG, Senator THURMOND, Senator HATCH, and Senator DURENBERGER.

We heard a little while ago about quotas, political correctness, and speech and justice.

As to quotas, I do not know anyone in this body who would oppose them more than I do. But I know that Sheldon Hackney would oppose quotas himself. He and his family have a long record of courageous support of efforts to overcome discrimination, and in no way does anything I know of Sheldon

Hackney's views or his record suggest that he favors racial or any other kind of quotas.

As to political correctness, if political correctness is defined as the Senator from North Carolina defines it, I do not know anyone in academia who opposes that kind of political correctness more than Sheldon Hackney, and I certainly would, too.

As to concern for substance of justice and not just for procedure, Sheldon Hackney's life has been a story of concern about justice, the substance of justice, and the substance of free speech.

I do not believe you would find Leonore Annenberg and Walter Annenberg writing to ask us to "give Sheldon Hackney an opportunity to serve this country with the same strong devotion, energy, and fairness that has guided his presidency at the University of Pennsylvania," where, Mrs. Annenberg said, "he steadfastly articulated freedom of expression, civility, and respect as the core values of the University." I do not believe if he were a champion of political correctness the Annenbergs would be saying they cannot imagine President Clinton putting forward a better candidate from either the Republican or Democratic standpoint.

As to speech codes, I find by and large they are an abomination. I think the first amendment is sufficient. As I said earlier, as a college president I yearn for the days when academia was not run so much by faculty and deans and student committees, and college presidents had their duty to intervene, act correctly, and call in students and deal with matters directly.

I know we are living in a somewhat different world. For a long time academia has been faculty-governed and full of student/faculty committees. And the process of adopting speech codes has spread all across the Nation. I hope that process will be reversed.

Sheldon Hackney has said that looking back on the experience at the University of Pennsylvania this year, he would like to see that process reversed. He has set up a committee to review the experiences of last year in search of revisions in Pennsylvania's speech code that will not lead to the inappropriate actions that were taken.

Sheldon Hackney has also pointed out to our committee that the student judicial system that was set up, that went into action after the water buffalo incident—after the two sets of rowdy students were shouting at each other and one student admitted that he had called out "water buffalo"—that student process is initiated under procedures that have been adopted by the university; wrongly, I think. They were designed specifically to set up an independent process, independent of the administration, and particularly independent of the university president.

If you read the record you will see Sheldon Hackney has called for a full review of the appropriateness of such procedures and he himself has said to the committee that he thinks this was a misapplication of any such policy and a great mistake for the matter to have been pursued as it has been pursued.

It has repeatedly been said that he did not speak up about the confiscation and destruction of copies of the Daily Pennsylvanian. That simply is not true. He spoke up in all of his statements issued in the days that followed. He appended those statements to our RECORD. I have read from some of them, but I just repeat his statement in which he said,

Confiscation of publications on campus is inconsistent with university policies. Neither I nor the University of Pennsylvania condone the confiscation of issues of the Daily Pennsylvanian. The Daily Pennsylvanian enjoys all the protections of the first amendment.

In addition, because of the overriding importance of freedom of expression to the very purposes of the University of Pennsylvania, it has explicit guidelines on open expression that govern and affirm the expression of diverse views in the university community. Any violation of this or other university policies will be investigated in accordance with established university procedures and those procedures call for the Vice Provost to set up a review board to look into the matter.

A review board has proceeded with disciplinary proceedings that are underway now, and led to one senior involved having his records withheld until this matter has received the full hearing of that panel.

Sheldon Hackney said the following statement on April 22:

Taking newspapers is wrong as I made clear in a policy statement 4 years ago and reiterated at the time of last week's events and restated again this week.

Of course it is wrong, Mr. President. In the very article put into the RECORD by Nat Hentoff, he has pointed out this wrong, which I denounce, which Sheldon Hackney denounced, has been spreading around the country and it should be stopped. Nat Hentoff's article in the RECORD now tells of incidents with the Yale Daily News, Dartmouth Review, the Trenton State College publication in Trenton, NJ, Southeastern Louisiana University at Hammond, and Penn State University, to name only a few.

That kind of action should be suspended by students and there should be full disciplinary action against students who undertake to undermine the fundamental principle of the first amendment on campus.

It has also been said he has not applied the principle of free speech evenhandedly over his career. He gave the committee many examples of just the opposite. It ranged from his support for campus speeches of Dr. Shockly, of Louis Farrakhan, and the King of Jordan, under attack in each

case because they were controversial and contrary to what a large number of students in those institutions supported.

As to the faculty letter that was sent to him which has been quoted to us, which says "Removal of the newspaper struck at the heart of the most fundamental values which the university should foster, diversity of thoughts, views and expression," Senator HATCH in our hearing said, "Do you agree with that?"

Sheldon Hackney said, "I do."

Senator HATCH said, "OK, that is important because if you did not I probably could not support your nomination."

Sheldon Hackney said, "I absolutely do." And the record shows that he does.

Senator HATCH concluded, after the long probing by him and by his colleagues, "Frankly, I don't think you deserve all of the criticism you have got. Frankly, I don't have to give you the benefit of the doubt. I believe that you mean what you say and you are going to do the best you can and I intend to support you in this committee and on the floor."

Mr. President, I yield the floor.

Mr. WOFFORD. Mr. President, I would like the understanding that we have had that in quorum calls, time runs equally against both sides to be noted and confirmed.

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

Mr. WOFFORD. 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.

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

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

Mrs. KASSEBAUM. Mr. President, Dr. Sheldon Hackney is a distinguished scholar with strong academic credentials for the position of Chairman for the National Endowment for the Humanities. Dr. Hackney is a graduate of Vanderbilt and Yale Universities; he is a past provost at Princeton; and the president of Tulane University and the University of Pennsylvania.

My colleague, the Senator from Pennsylvania [Mr. WOFFORD] has spoken quite eloquently to the recommendations of Dr. Hackney for this position.

He underwent some lengthy review before the Labor and Human Resources Committee, and in the course of my own review of this nomination, I carefully examined not only his academic record but also his actions with respect to a number of incidents at the University of Pennsylvania which were widely reported in the news media and which have been covered here on the Senate floor to some extent this afternoon.

Based on the review that I undertook, Mr. President, I have determined that Dr. Hackney's actions in those situations did not disqualify him for the position of NEH Chairman.

For the record, I asked Dr. Hackney whether he felt the charge of racial harassment against Mr. Jacobowitz was justified. Dr. Hackney stated he did not believe it was justified, noting that the University of Pennsylvania's speech policy is very narrowly focused and is to be applied only in situations in which racial or ethnic slurs are used in face-to-face encounters.

Dr. Hackney stated the facts of the case did not meet this criteria.

Dr. Hackney stated he did not intervene in the case because, as currently structured, there is no provision for such intervention into the university's judicial process even when it is clearly misapplied.

In some ways, I think it is unfortunate, and perhaps through all of these incidents that have happened at the University of Pennsylvania, they will set up a different process.

To have intervened, Dr. Hackney argued, would have jeopardized the legitimacy of the university's judicial process, disrupting the numerous cases being properly adjudicated. Dr. Hackney stated that such disruption would have resulted in a divisive campus crisis.

Although Dr. Hackney states his confidence that the judicial process would have ultimately dismissed the charges against Mr. Jacobowitz, Dr. Hackney now believes the speech code and judicial process should be reexamined in the light of that incident.

Regarding the theft of 14,000 copies of the university students' newspaper, Dr. Hackney asserted that his statements at the time of the incident recognized the seriousness of the violation and emphasized the privacy of free speech on a university campus.

Dr. Hackney stated that, in retrospect, he would have made this point in a more forceful manner. He added that the students involved are currently facing charges of misconduct. He went on to point out, Mr. President, that throughout his career, he has defended free inquiry, free speech, and academic freedom for people from all parts of the political spectrum.

In this regard, he noted the diversity of speakers that he had provided security for on the campus and believed that everyone should have their views heard in a university and campus setting.

As to the charge that Dr. Hackney proposed banning the ROTC program for the University of Pennsylvania campus, he responded that the charge is completely false, noting that he is both a product and vocal supporter of the ROTC program.

Mr. President, although I do not think the various allegations asserted

against Dr. Hackney should disqualify him for the position of the National Endowment for the Humanities chairmanship, I do believe it will be necessary for Dr. Hackney to exercise strong leadership as he takes the helm of the endowment. The National Endowment for the Humanities is a publicly funded entity. As such, the NEH should be distinguished from the privately funded universities over which Dr. Hackney has served as provost and president.

Ultimately, Dr. Hackney will be accountable for the stewardship of NEH funds—a responsibility which demands a sensitivity to the humanities as well as to the tax-paying public. Firm guidance from the top is essential to assuring that the endowment is not constantly embroiled in side issues and that process is not substituted for judgment.

It is with the advice that he exercise strong and independent guidance against the pressures of ideological bias that I will look forward to supporting Dr. Hackney and will vote for him when the vote will be called tomorrow.

I ask unanimous consent that my questions and Dr. Hackney's responses be printed in the RECORD at this time.

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

QUESTIONS FOR THE RECORD BY SENATOR KASSEBAUM FOR SHELDON HACKNEY, NOMINEE FOR CHAIRMAN OF THE NATIONAL ENDOWMENT OF THE HUMANITIES

1. Regarding the Eden Jacobowitz affair, did you think the charge of racial harassment against Mr. Jacobowitz was justified? If so, please explain why.

I did not think the charge of racial harassment was justified. Penn's policy is very narrowly focused. It applies only in situations in which racial or ethnic slurs are used in face to face encounters and with no other intent than to inflict harm. The facts of the case do not meet these criteria. In addition, because of the misapplication of the policy and the confusions that abound in this case, I have come to feel that even though civility is very important in an educational setting it is a mistake to try to enforce it among members of the campus community through rules and penalties administered through a judicial system.

2. In retrospect, do you believe you should have intervened in the university judicial process brought against Mr. Jacobowitz, or do you stand by your action not to intervene?

As awful as the spring was, I still think it was not appropriate for me to intervene in the judicial procedure. There is no provision for the President or for an officer of the University to intervene. To have intervened would have called into question the legitimacy of the entire system that handles dozens of cases every year, denied to the complainants their right to have their complaint adjudicated by a faculty-student hearing panel, and thrown the campus into an even more divisive crisis than the one through which it actually lived. Had the system worked properly, and a hearing panel heard the case, I believe that justice would have

prevailed. As it turned out, the case came to a close when the complainants withdrew their charges.

3. In the episode involving the theft of 14,000 copies of the Daily Pennsylvanian, the University's student newspaper, in April, 1993, please explain your reaction at the time of the incident, including the complete statement issued by your office.

I append the statements issued at the time of the incident. I believe they make clear that I recognized the seriousness of the violation and emphasized the primacy of free speech on a university campus.

4. Please describe in detail what your administration did to identify and bring charges against those responsible for the Daily Pennsylvanian theft? Has anyone ever been charged in the theft? If so, what was the result in terms of penalties meted out?

The Committee on Open Expression (an important faculty-student committee that monitors the Open Expression Guidelines) has ruled that the incident was a violation of the Open Expression Guidelines, thus making clear that charges would be brought. A number of students apparently involved in the incident have been identified and will face judicial procedures when they return to campus for the fall term. The one senior involved has had a "judicial hold" put on his transcript, meaning that he must clear up his disciplinary status before receiving his degree or being able to have his transcript sent to employers or graduate schools. In view of the seriousness of this case, the Vice Provost for University Life has appointed a respected senior faculty member to serve as the Special Judicial Inquiry Officer for this case.

5. Do you believe your response to the incident was appropriate considering the seriousness of the act in the context of First Amendment rights to free expression?

Yes, although I do wish now that in my original statement I had not used a formulation that was so easily taken out of context and misrepresented. If I could write the document again, I would undoubtedly use language that was even clearer and stronger in condemning the confiscations.

6. Your responses to the Jacobowitz affair and to the newspaper theft incident have been characterized as employing a double standard on the issue of free expression. What is your response to that charge?

The charge is absolutely false. Throughout my career, I have defended free inquiry, free speech, and academic freedom for people from all parts of the political spectrum, left, right and center. I have repeatedly done so when under considerable pressure to cancel appearances of controversial speakers or to discipline students or faculty who have earned the disapproval of persons or groups on the campus and off. The list of speakers whose security arrangements I have personally supervised is a veritable who's who of controversy over the past 20 years, from William Shockley to Louis Farrakhan and all shades of opinion between.

One incident in particular has been used to suggest that I am less than even handed. In the early 1980s, the South African Ambassador to the United States accepted an invitation to speak from a student group. The student group was then informed that University policy (which preceded my arrival at Penn) required host groups to pay all the costs of invited speakers, including security costs. Special security required for the South African Ambassador would have incurred substantial costs. The student group therefore withdrew the invitation. As soon

as I heard of this situation and realized that it was based on a University policy, I changed the policy. The University isn't really open to all points of view if a host group is required to be rich enough to pay the costs involved in keeping opponents of the speaker from disrupting the event. The new policy was thus in effect when all subsequent speakers, including Louis Farrakhan, have been invited to speak on campus.

7. The Wall Street Journal reported that at the time of a speaking engagement by artist Andres Serrano on the University of Penn campus in 1989-90, you refused to order the removal of campus sidewalk graffiti depicting anti-religious and graphic sexual symbols. Please explain what occurred.

As with so much that the Wall Street Journal has reported about me, the facts are wrong in important respects, highly distorted in other respects, and the story presented in a misleading way. Early on the morning of April 13, 1993, members of Penn's groundskeeping crew arrived on campus to find, written in chalk, graffiti depicting religious and sexually graphic and offensive symbols and slogans on Locust Walk, the main pedestrian thoroughfare intersecting the Penn campus. The groundskeeping crew, on its own initiative, immediately washed off this graffiti. Later that day the students—members of a gay rights group on campus—who had originally done the graffiti writing, protested to Penn's Assistant Vice Provost for Student Life that the erasure of the graffiti violated the University's Guidelines on Open Expression. The Committee on Open Expression, following precedent, found that the graffiti was protected speech as long as the graffiti was temporary and did not permanently deface University property. Members of the group returned the next day and renewed their graffiti writing. The issue was handled under regular University open expression policies and procedures. I was not personally involved in it. The incident did not relate to Andres Serrano's visit to Penn, which took place on December 5, 1990.

8. Please explain your criticism of the Helms Amendment as it pertained to the work of artists, Robert Mapplethorpe and Andres Serrano.

I did criticize the language of the Senate amendment to the NEA-NEH appropriation bill for FY90 (the Helms Amendment) because I believed that the language of the bill—which Congress wisely did not include in the final version of the appropriations legislation—was impossibly vague and overbroad. The Helms amendment to the FY90 appropriations bill would have imposed unworkable content restrictions, and I believe that Congress has been wise in its judgement not to adopt it.

9. The Wall Street Journal reported that you proposed banning ROTC from the University of Pennsylvania campus in 1990 because of the military's prohibition on gays and lesbians serving in the military. Is this true?

As with a number of other assertions made by the Wall Street Journal, this is simply untrue. I am a supporter of ROTC on campus. Indeed, I am a product of the NROTC program at Vanderbilt University, and I have spoken frequently on campus about why I think it is a good program.

10. You have been quoted in the past as stating that the impact of "political correctness" on American university campuses is "greatly exaggerated." Do you believe that "political correctness" contributes to the free exchange of ideas and tolerance of different points of view in American academia today?

The term "political correctness" is almost hopelessly vague and imprecise. It began as a term of self-derision, and now it has taken on a life of its own as a caricature of a certain kind of liberal left orthodoxy that is so solicitous of the interests of groups that can claim the status of having been victimized by society that the general interests of the University are of secondary importance and at times even the search for truth is threatened. Fortunately, "political correctness" does not dominate American campuses, though it is something about which faculty and academic leaders ought to worry about. I believe that I am representative of the broad mainstream of the American professoriate that sees danger in any potentially intolerant orthodoxy, but that may also see partial merit in some ideas that may be part of a "politically correct" position.

Mrs. KASSEBAUM. I just reiterate my strong support for him at this time in this position. I feel it offers an opportunity not only for his scholarly and intellectual interests, but for his opportunity to bring an evenhandedness and a firm sense of direction to the National Endowment for the Humanities.

I yield the floor, Mr. President.

Mr. WOFFORD. I thank the Senator from Kansas for her thoughtful statement with which I agree, and for her care and concern and instructive approach to this nomination. It is a tradition that I have so far experienced in the Labor and Human Resources Committee, and in no small part due to the Senator from Kansas.

I also, once again, pay tribute to Senator HATCH's probing, critical questions that led to his support of Sheldon Hackney, and to note that as a former college president, time and again, I found Senator HATCH's observations as to what happens to university and college presidents extraordinarily perceptive, as well as witty and humane.

I pay tribute also to the members of the other side of the aisle in our committee who came into the committee hearings thinking they were going to be against Dr. Hackney, and after the hearing unfolded and their questions were answered, they joined in the unanimous recommendation for the nomination of Sheldon Hackney.

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

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

Mr. SPECTER. Mr. President, today I express my support of the confirmation of Dr. Sheldon Hackney to serve as Chairperson of the National Endowment for the Humanities. Dr. Hackney's reputation as an outstanding educator is well known both on the national level and across the Commonwealth of Pennsylvania, where he most

recently served as president of the University of Pennsylvania. Having been appointed to this office in 1981 after serving as president of Tulane University and as provost of Princeton University, Dr. Hackney was responsible for all academic and administrative functions of Penn's 12 schools, its medical center, and the more than 20,000 employees responsible for making the university the largest employer in Philadelphia, other than the municipal government, as well as personally teaching classes at Penn.

Dr. Hackney has an outstanding record in academia. He received his bachelor of arts degree from Vanderbilt University in 1955. After serving his country in the U.S. Navy from 1956-61, he earned his masters and doctorate degrees from Yale University in 1963 and 1966, respectively. He is an accomplished historian, having written several books on the American South; he has received numerous honorary degrees; and Dr. Hackney has served on numerous panels and commissions in academia.

Although his reputation is most notably one of educational leadership, Dr. Hackney has many accomplishments outside the University of Pennsylvania. Through his chairmanship of the West Philadelphia Partnership, Dr. Hackney directed the growth of a working partnership among Penn, neighboring institutions, and the residents and business people of West Philadelphia. Dr. Hackney has also served as a member of the board of directors of the Greater Philadelphia Chamber of Commerce, the Greater Philadelphia Urban Affairs Coalition and the University City Science Center.

Overall, my knowledge of Dr. Hackney while he has served the University of Pennsylvania and the surrounding community has been positive. Recently, however, I became very concerned with his handling of two widely publicized incidents at Penn: One, of a student shouting an alleged racial epithet—"water buffalo"—at a group of African-American students; and second, the confiscation and destruction of 14,000 copies of an issue of the campus independent student newspaper by African-American students because of their objections to a columnist who wrote for the paper.

Regrettably, these highly publicized events left something to be desired; however, these matters are substantially outweighed by the balance of his record.

One word of caution: I am concerned about Dr. Hackney's move from academia to the rough and tumble of Washington politics. He will face many tough challenges from advocates at various positions on the political spectrum. I am optimistic that Dr. Hackney will be able to adapt to this challenge, and I urge him to keep this fac-

tor in mind as he takes on this new assignment.

Mr. HEFLIN. Mr. President, I am pleased to rise in strong support of Dr. Francis Sheldon Hackney's nomination to be the President's Chairman of the National Endowment of the Humanities. I have known Dr. Hackney, his wife Lucy, and his parents for a number of years, and know firsthand of his impeccable credentials and unique qualifications for this position.

Sheldon is currently serving as president of the University of Pennsylvania. In his capacity as Penn's 21st chief executive, he is responsible for all academic and administrative functions of its 12 schools, its medical center, and the more than 20,000 employees who make the university the largest employer in Philadelphia outside the local government there. Sheldon is also a history professor at Penn. Before joining Penn, Sheldon was president of Tulane University from 1975 to 1981 and was Provost of Princeton University from 1972 to 1975.

Under Sheldon's capable leadership, Penn has experienced a 347-percent growth in its endowment and a 300-percent increase in annual voluntary contributions. At the same time, Penn's operating expenditures have increased almost 220 percent to \$1.3 billion for the fiscal year ending June 30, 1992. In October 1989, the university launched its 5-year Campaign for Penn. The fundraising campaign's goal of \$1 billion makes it the largest such effort ever undertaken by an Ivy League institution and the second largest by any American university.

As the university's primary representative to the Philadelphia community, he is responsible for a major expansion of Penn's direct involvement with the issues and challenges facing the West Philadelphia community adjoining the campus. Through his chairmanship of the West Philadelphia partnership, Sheldon has directed the growth of a working partnership among Penn, neighboring institutions, and the residents and business community of West Philadelphia.

Sheldon attended my undergraduate alma mater—Birmingham Southern—for 1 year, and later earned his bachelor of arts degree at Vanderbilt. He later took his master of arts and doctoral degrees at Yale. When he is confirmed to head the National Endowment for the Humanities, Sheldon will oversee a Federal agency with an annual budget of more than \$175 million. The Endowment awards grants to scholars, teachers, and libraries working in the humanities.

Born in Birmingham, AL, Sheldon is a noted historian and authority on the American South. He authored the winner of the 1969 Albert J. Sevrige prize for the best book on American history that year, "Populism to Progressivism in Alabama." He is also the author of

"Populism: The Critical Issues," published 2 years later. His articles on southern history have appeared in the leading academic journals. From 1972 to 1975, Sheldon was a member of the board of editors of the "Journals of Southern History." He edited "Understanding the American Experience: Recent Interpretations" and wrote the introduction to Gerald Gaither's "Blacks and the Populist Revolt."

Sheldon enjoys a reputation as one of the foremost experts on Southern history and culture, which makes this southern Democrat especially pleased to support him. But as we all know, he has established himself in the field in so many other ways as well. He has served on the Rockefeller Commission on the Humanities and the American Council of Education's Commission on Women in Higher Education. In the early 1980's, he chaired the board of directors of the Carnegie Foundation for the Advancement of Teaching. He is still a member of that board. In 1987 and 1988, he chaired the Consortium on Financing Higher Education.

Although Sheldon has spent his adult life away from his native State, he attributes much of his success to the lessons he learned while growing up in Alabama. He recently said, "I attribute a good bit of the shaping of my values to the Methodist Church. That was very important to me. Even in high school, a group of friends and I went to Methodist youth fellowship every Sunday night." He also credits his parents with helping to shape the values by which he lives today.

Mr. President, Sheldon Hackney has a distinguished record as a first-rate scholar, author, educator, and astute, fair, and temperate administrator. He is uniquely suited for the challenge of heading the agency and carrying out its mission to support public programs, education and research in the humanities.

I wholeheartedly endorse this nomination and urge my colleagues to vote favorably on Sheldon Hackney's appointment to be National Endowment for the Humanities Chairman. I have every confidence that he will bring enormous energy to the agency and a dynamic approach to promoting the humanities in this country.

Mr. JEFFORDS. Mr. President, I rise today to express my support for the confirmation of Dr. Sheldon Hackney as chair of the National Endowment for the Humanities.

Controversy has arisen over Dr. Hackney's nomination because of two events on the campus of the University of Pennsylvania. The events focused on the conflict between the freedom of expression and diversity. Unfortunately, tensions like these have existed at the University of Vermont, as well as virtually every other college campus in America. And unfortunately, tensions

like these are indeed an effect of many of the burning social problems in America's cities today.

I am not going to go into detail on these incidents, for I believe everyone is aware of them. Rather, I would like to say that I have spoken very candidly with Dr. Hackney about this very difficult issue. It is a tough issue, one to which there is no clear or easy answer. Should he have handled the situation a bit differently? Probably. Nevertheless, he assured me of his commitment to the freedom of expression, something he has adamantly advocated throughout his life. Dr. Hackney is certainly not the first university president to handle such a difficult issue, nor will he be the last.

In my mind, the debate over whether he did the right thing or the wrong thing is not the concern here. The real concern is choosing a chairperson to effectively lead the NEH.

The National Endowment for the Humanities is an agency that has sailed through rough waters in recent years. Its existence and functions must be stabilized and depoliticized. Despite the attacks it has endured, the NEH has been a major force in intellectual life in America for the past 28 years. In Vermont, the Vermont Council on the Humanities is using NEH grant money to support literacy programs in an effort to achieve full literacy in my State by the turn of the century.

The NEH needs a fair, reasonable, and visionary leader. As a man who has devoted his professional life to the academic community, and as a man who has led a prestigious university through uncertain times, Sheldon Hackney has proven he is up to the task. Clearly, he will bring this leadership to the NEH.

On July 14, the Labor and Human Resources Committee unanimously approved his nomination. I believe the full Senate should do the same.

Mr. LEAHY. Mr. President, I rise to support the confirmation of Sheldon Hackney to be the next Chairman of the National Endowment for the Humanities. The NEH has an important and difficult mission to fulfill. It is responsible for supporting and sustaining the highest level of scholarly inquiry and to share the riches of thought in the humanities with the public. Over the years, NEH has helped interpret great works in American thought to our citizens, and has developed our traditions more deeply through its grants and programs. Through the State humanities councils, NEH reaches people through libraries, public forums, media presentations, and exhibits, and literally has taught thousands of Americans to read, bringing them into the mainstream of the democracy and economy.

Dr. Hackney's well-publicized nomination recently was voted out of Senator KENNEDY's Labor and Human Re-

sources Committee by a unanimous 17-0 vote. Senators across the political spectrum gave him a fair hearing, listened to his positions on academic freedom and free speech. They listened to a distinguished southern historian, president of the University of Pennsylvania for 12 years, and found a man who can lead the NEH to fulfill its mission, and bring the humanities—areas of study that bring us the deeds and thoughts of other times—into everyday life.

Dr. Hackney's nomination should not be politicized any further. He needs our bipartisan support to lead the National Endowment for the Humanities in a difficult time. He should be confirmed.

Mr. COATS. Mr. President, the National Endowment for the Humanities is an organization under considerable stress. There is a swift current in the academic community that moves toward the left. That current threatens to take institutions like the NEH along with it. And if that happens, a public trust is violated and public support is squandered.

The Chairman of the NEH needs to be an activist for balance, fairness, and free speech. When Federal money is involved, no Chairman can be allowed to pick favorites in academic debates—no matter what pressure is applied. No matter how unenlightened that a principles fairness may seem.

Dr. Hackney has indicated he shares this view, and on the basis of my personal discussion with him, and his responses to my questioning of him during his confirmation hearing, I believe him.

But his past record does raise some questions. About his treatment of free speech and a free press. And about his forcefulness in opposing the strident voices of the politically correct.

But these are questions, not disqualifications. And I will vote for Dr. Hackney. But I hope he will remember that, for a number of us, our concerns will not end with his confirmation. Dr. Hackney has an opportunity to prove that his comments before the Labor Committee truly reflected not only his views but his actions.

I trust that Dr. Hackney will take advantage of this opportunity. I wish him well, and intend to work with him to advance the vision and goals for the NEH that I believe we both share.

Mr. WOFFORD. Mr. President, when I received the appointment to this body I vowed that I wanted to do everything I could to make something good come out of the tragic loss of John Heinz.

I would like to conclude my part of this debate today with a statement that Teresa Heinz, the widow of Senator Heinz, sent me this morning on behalf of Sheldon Hackney. She writes:

I have known Sheldon Hackney for a number of years. His work as an educator and as a leader in the field of humanities is well known and well respected. Dr. Hackney will

bring valuable leadership and expertise to the National Endowment for the Humanities. I know he will make Pennsylvanians very proud, and I am very, very proud to call him my friend and to endorse his nomination.

Mr. President, I yield back all time on this nomination.

This request has been cleared by the minority. And I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, for 7 minutes I would like to speak as if in morning business and I ask unanimous consent to do that.

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

Mr. GRASSLEY. Mr. President, in the 1980's, conservatives advocated executive power. Coincidentally, during the 1980's, conservatives had executive power. The way some conservatives talked when they occupied the White House, you would've thought they subscribed to the vision of a President "with the diadem sparkling on his brow and the imperial purple flowing in his train * * * seated on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates in all the supercilious pomp of majesty," as Alexander Hamilton lampooned.

Some who have noted the recent convergence of Pennsylvania Avenue and Rodeo Drive might think the anti-Federalists' fears of an American imperial court have been realized. But the President is not a monarch, a shah, a sultan, or a grand poobah—even when Hollywood celebrities normally found in the pages of the National Enquirer roam the White House with staff ID's.

Contrary to the beliefs of many of my fellow conservatives, the framers intended the legislature to be the pre-eminent branch of Government, and that Congress should conduct vigorous oversight of the executive.

During the Reagan and Bush administrations, I frequently differed from my Republican colleagues in my unwillingness to blindly defer to the judgment of the White House. I did not make any friends in my party by subpoenaing the Attorney General before my subcommittee, and holding him in contempt, 2 weeks before a Presidential election. But I never saw my role as coying up in the lap of the White House. I believed then, as I do today, that the imperial President has no constitutional clothes.

Our Constitution gives the most dangerous powers of Government to the Congress, it is the most representative body that is responsible for legislation,

for the public fisc, for declarations of war and regulation of the armed forces, for the regulation of commerce—for the functions the framers most strongly wished to restrain. In contrast, the President's enumerated powers are quite limited. He is the commander in chief of the armed forces, responsible for making treaties with foreign powers, and charged with ensuring that the laws are faithfully executed. If the Constitution really made the President the one-man quasi-legislature many conservatives have advocated, it probably wouldn't have been ratified.

Our Federal system of Republican government ensures the preservation of liberty through the atomization of power. The centralization of power in a single individual was anathema to the Americans of the 1780's, who had endured the tyranny of monarchs. They were willing to tolerate creation of a President only so long as his powers were strictly limited. They were willing to grant those powers to an individual rather than a committee, primarily because delegation to an individual guaranteed greater accountability.

Unfortunately, the massive growth of the Federal Government in the 20th century has resulted in the accretion of vast new power in the executive. In a heavily regulated industrial society, the faithful execution of the laws is far more important than it was in a sparsely populated agrarian society.

This growth in the executive is the result of the increasingly regulatory posture of Congress, which has frequently pushed the bounds of its powers beyond the constitutional envelope. But conservatives err when they contend that the best counter to congressional power is to grant even more power to the President.

In a recent edition of Roll Call, Llewellyn Rockwell, Jr., sets out an excellent case for "why conservatives are foolish to push [an] imperial Presidency." I recommend Rockwell's piece to my colleagues, and ask unanimous consent that the text of the article be printed in the RECORD as following my remarks.

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

(See exhibit 1.)

Mr. GRASSLEY. Mr. President, Rockwell makes the case that conservatives' partisan advocacy of executive power is both constitutionally and politically inappropriate.

The Congress, with its direct and constant link to the people, is the branch of Government conservatives should look to for assurance of liberty through limited government. The President, presiding over the massive Federal bureaucracy and law enforcement mechanism, is the officer of Government most capable of limiting liberty. Congress is the best bulwark against the bureaucratic tyranny of an expansive Federal Government—as recent events have demonstrated.

While recognizing the primacy of the legislature, we must also recognize the need for congressional reform. Though Congress is the most accountable branch, it must be made more accountable. Congress should adhere to the laws it prescribes for the rest of society. We should have committee term limits, and the President should have line-item veto power. These and other reforms would enhance our democracy.

Congressional reform is necessary to erase the damage done to the constitutional system by decades of partisan entrenchment and fiscal logrolling. As the many Americans looking for new, independent leadership recognize, we need to destroy politics as usual to save democracy. We need to redesign the budget and appropriations processes, and replace polls and interest groups with genuine exercises in public judgment.

Now that conservatives have left the White House, I hope they will realize that it is myopic to argue that the arrogation of power by Congress is best countered by an imperial executive. The way to avoid Federal bureaucratic tyranny is not to consolidate power in the chief bureaucrat. Instead of concentrating Federal power, we should dilute it. Conservatives should counter congressional arrogance by returning power to States and municipalities. While a liberal's idea of reinventing government is reaffirming bureaucracy, conservatives know that by reforming Congress and reviving federalism, we can reinvent democracy.

EXHIBIT 1

[From Roll Call, July 12, 1993]

WHY CONSERVATIVES ARE FOOLISH TO PUSH IMPERIAL PRESIDENCY

(By Llewellyn H. Rockwell, Jr.)

Conservatives are going through another of their periodic intellectual spasms over the relationship between the executive branch and Congress. The controversy, which dates back to at least the New Deal, centers on which branch of government should have the say in budgets, regulatory policy, foreign affairs, and judicial appointments.

Even though the Constitution makes Congress the preeminent branch of government, during the 1980's conservatives argued for an imperial presidency. Of course, they didn't call it that. Instead, they argued that Congress was imperial, a trespasser on the justly expansive powers of the president.

Conservatives had been semi-imperialists on this question when Nixon was chief executive, but they started salaaming the White House when Congress questioned Ronald Reagan's foreign mercenary armies, and naturally, the argument spilled over into domestic policy.

By the late 1980s, it was an article of the conservative faith that the president had, and should have, autonomous policy authority. Conservatives even called the president the nation's "commander-in-chief," as if he were in charge of civil society.

The president should have the line-item veto, they told us, because it would gut Congressional authority over spending. All laws applying to the public ought to apply to Congress, too, even though this would empower

minor bureaucrats over legislators. Congressional terms should be limited while bureaucrats serve for decades, further enhancing the arbitrary power of the executive branch.

The President, the Wall Street Journal told us, should even assume the power to change tax laws on his own say-so, such as lowering the capital-gains tax. The Journal also wanted the president to assume, by executive fiat, the line-item veto, and to have full authority over international trade.

Maybe they thought they'd never lose the White House. Yet now, conservatives' only friends are in the legislative branch. Congress, in fact, is the only bulwark against full Clintonian statism. Only by using the powers and tactics—filibusters, demagogic speeches, agitation about the rules, etc.—that the Democrats used in the 1980s against Reagan's adventurism can a liberal president be hampered.

None of this squares, of course, with the 1980s' conservative belief that Congress' role is to shut up, vote money, and salute the prez. But if Congressional Republicans today bowed down before him the way they wanted the Democrats to under Reagan, Clinton would have had a permanent honeymoon out of "respect for the offices of the presidency."

And although grass-roots conservatives cheered on Bob Dole's attack on Clinton's "stimulus," the conservative leadership is still mired in error.

A prominent conservative think tank in Washington, DC, has mailed out a million copies of *The Ruling Class* by Eric Felten, which traces all of America's troubles to a handful of Hill staffers, and former Bush speechwriter Tony Snow, now a columnist for the Detroit News, argues on National Public Radio for a Caesarist presidency and a rubber-stamp Congress.

Yet if any of Bill and Hillary's new taxes, new spending, and socialized medicine is stopped, it will be thanks to Congress.

The habit of presidential deification may be so ingrained that it cannot be broken. But conservatives should do their best.

It is far better to trust a Congress controlled by either party than a president whose minions spend 99.9 percent of the federal budget and regulate our businesses, families, and communities with such menacing meticulousness.

For example, Congress is far closer to the people. A Member never gets through the day without some contact with his or her constituents, people who pay the taxes and have to live under the laws voted on. Yes, many are seeking favors and privileges. But more complain about high taxes and the burdens of the federal bureaucracy, and Members and their staffs have to listen.

The millions of unelected bureaucrats in the executive branch, on the other hand, have contact with us only when they place their boots on our backs. And the president watches abstractions like the polls.

Congressional supremacy is far from a perfect system, but it's leagues ahead of the executive tyranny that the Founders, and their English parliamentary predecessors, hated and feared.

If we get through the next years without 100 percent of the Clintonian program being fastened on us, we can thank Congress. Conservatives ought to be leading the applause.

Mr. GRASSLEY. I yield the floor.

Mr. CRAIG addressed the Chair.

Mr. PRESIDING OFFICER. The Senator from Iowa is recognized.

EXECUTIVE SESSION

NOMINATION OF SHELDON HACKNEY, OF PENNSYLVANIA, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

The Senate continued with the consideration of the nomination.

Mr. CRAIG. Mr. President, I am here today to talk about a good, decent, intelligent man and a highly regarded scholar. Because, after meeting Dr. Sheldon Hackney, after reading the record of his achievements and reviewing the transcript of the hearing held by the Labor and Human Resources Committee, I am convinced he is a decent and scholarly man.

Surely that is the sort of person we need to head the National Endowment for Humanities—the organization that advances what is highest and noblest in human culture by supporting scholarship in all the branches of learning that investigate human constructs and concerns. The head of that organization should reflect the kind of scholarship and culture that we expect the organization to support.

Mr. President, based on those requirements, an individual as decent and scholarly as Dr. Sheldon Hackney must surely be eminently well-qualified to serve as head of the National Endowment for the Humanities.

There is just one thing that has me concerned.

Dr. Hackney said during his testimony before the Labor and Human Resources Committee that "university presidents operate in a sea of powerful and conflicting currents." I would submit that Federal grant-making organizations like the National Endowment for Humanities operate in stormy seas the likes of which Sheldon Hackney has not even begun to describe.

And for that reason, NEH does not need a noble figurehead; it needs a rugged captain who can stick his oar in the water and give the organization a strong shove in the right direction—against formidable forces, when necessary.

Can Dr. Hackney captain the NEH?

Well, when the spotlight shone on Dr. Hackney's reputation as a stalwart defender of free speech, some questioned why the South African consul was not allowed to speak at Penn because of the opposition of minority students, although Penn paid most of the speaking fees and security for hate-monger Louis Farrakhan to speak at the university.

What was the problem here? What was the difference?

Now, Dr. Hackney explains to me that the first episode took place early in his presidency—the denial of the South African consul—and, as a result of that, the university changed its policy and that is why Louis Farrakhan was allowed to speak.

In this case, Dr. Hackney certainly stuck his oar in the water and put the boat back on course. Perhaps a little late. He did not tell me if there was any attempt after changing the policy to reinstate the South African consul. But maybe the students were not interested anymore in hearing those views. Surely we could not characterize this as a tendency to protect speech from one point of view but not speech from another point of view.

And I applaud him for the statement he made to the students protesting the Farrakhan speech: "In an academic community, open expression is the most fundamental value. We can't have free speech just some of the time for some of the people."

There is no question where he stands on freedom of expression in art. He ardently defended the decision of Penn's Institute of Contemporary Art to exhibit the Mapplethorpe photographs. Now, during his confirmation hearing, he agreed that there is a big difference between a university displaying controversial art and a National Endowment making a decision about subsidizing a particular project with tax funds. Perhaps he regrets denouncing one of our Senate colleagues who understood that same distinction and was trying to get NEA to be more responsible in handling those taxpayer dollars. And although Dr. Hackney said at the time that it is part of the function of art to shock people, perhaps he does not feel that is the function of studies in humanities.

In any event, this decent and scholarly man certainly deserves commendation for the stand he took on freedom of expression at the time, when he wrote "the best protection we have found for a democracy is an unregulated market in expression."

Those two statements I have quoted have quite a ring to them. And they certainly reflect an uncompromising stand on freedom of expression.

Maybe that's why his latest statement on the issue which has caused such a storm of criticism, is somewhat of a frustration. When students stole an entire run of the Penn student newspaper carrying articles that some claimed the minority community found offensive, Dr. Hackney said confiscation of newspapers was wrong. Unfortunately, he didn't say it as clearly nor as immediately as he had responded in the past when freedom of expression was threatened. There seems to be a time lag here, when the shoe is on the other foot. Instead, he said "this is an instance in which two groups important to the university community valued members of Penn's minority community and students exercising their rights to freedom of expression, and two important university values, diversity and open expression, seem to be in conflict."

That doesn't quite have the ring to it that his earlier statements had. In

other words, Dr. Hackney, sometimes you appear to be very loud and clear in your defense of freedom of expression. But sometimes you appear to withdraw or to be considerably hesitant. And that has me concerned.

But because Sheldon Hackney is a decent and scholarly man, we can be sure that he intended to be equally stalwart in his defense of these articles critical of the university's admission and disciplinary policies. Maybe he did not push quite so hard on his oar that time, but he says it was in the water.

Dr. Hackney also explained some apparent inconsistencies in the application of the antiharassment code at the university. The author of the offensive newspaper articles had been charged previously with racial harassment under the school's antiharassment policy. When another teacher intervened and went to Dr. Hackney, the investigation was dropped within 9 days. Yet in the famous "Water Buffalo" case, Eden Jacobowitz spoke to Dr. Hackney about the case and Dr. Hackney did not intervene. Mr. Jacobowitz went through weeks uncertain of his future, before the case was finally dropped. Dr. Hackney says it is not his role to intervene and he does not remember speaking to Mr. Jacobowitz, even though witnesses do recall the conversation.

But Dr. Hackney is a decent and scholarly man, and surely that is all the explanation we need for that apparent inconsistency.

We will have to wait until next school year to discover what happens to the students charged with stealing that newspaper. Dr. Hackney explained that there was not enough time left in the school year to begin the disciplinary process against them. Maybe that was because the students were never charged by the administration and only weeks after the event was a complaint filed by a faculty member. However, there was enough time to begin an investigation of a security officer who detained some of the students caught stealing the paper.

Again, am I to question Dr. Hackney for failure to respond quickly in one area and ever so quickly in another? That security officer was reassigned to desk work until the investigation was complete.

But as we know, Dr. Hackney is not to blame because he was not really in charge of the disciplinary process. He was only the president of the university. It is regrettable that those in charge did not reflect the good qualities of Dr. Hackney—for surely then they would have swiftly sanctioned this attack on freedom of expression.

Then, there was the question about misspending of about \$1 million in Federal research funds, funds for alumni fundraising activities, overhead and expenses for the university-provided president's mansion—items specifically prohibited by Federal guidelines. But

Dr. Hackney explained that the University of Pennsylvania itself had begun to uncover these problems before the Federal auditors even arrived, because when another major university was audited on the use of its research grants, he decided Penn should look into its own spending. Again, that was in the water before the Federal Government knew it had reason to complain. I think it is good fortune for the American taxpayers that Dr. Hackney has learned this lesson before he takes over the leadership of this organization.

These incidents have been repeated again and again during the confirmation proceedings. Dr. Hackney has given his explanations over and over. None of them disprove the fact that he is a decent and scholarly man.

But there is one conflict I just can't get past. It is about Penn's antiharassment code—sometimes called a speech code.

Some of my colleagues have heard me talk about these codes in the past. I am unalterably opposed to them. As Senators, we are probably more aware than others of the importance of words. We make our living using words to persuade our colleagues to take certain actions. We know how changing a single word in a law can radically alter the impact of that law. Daily, we use words as weapons—and as shields.

So I hope my colleagues can also understand how words can do more than just express thoughts—they can also shape thoughts. But if any of my colleagues are uncertain about the folly and evil of speech codes, let me bring this debate home for you. This is where I have to begin to question the credentials of Dr. Hackney.

Imagine, for a moment, that we had the same kinds of restrictions in the U.S. Senate that exist on some college campuses today, and that for a time existed at Penn.

Imagine what it would be like to have a Senate colleague stop you in the middle of debate and say to you: I don't like that argument you're making. Even though you haven't mentioned me or my State directly, I don't like your ideas. As a matter of fact, I am personally offended by the argument you are making. You have no right to say things that offend me.

That is where freedom of speech stops: You have no right to say things that offend me. Not fighting words—we know that words which provoke immediate violence are entitled to constitutional protection. But offensive words are not necessarily fighting words, and most assuredly they are not protected as constitutional.

And imagine that the Presiding Officer of the Senate says to you: "Your colleague is exactly right. In this Senate we believe that the only way to conduct a healthy debate is a supportive environment. Each Senator has the right to dictate what he or she finds of-

fensive. If your words or ideas are offensive to any other Senator, you are not allowed to express them. And if you do express them, you will be sanctioned. You could even be expelled."

That is what some of the policies are like and have been like at some of our university campuses. With politically correct speech. The kind that for a time Dr. Sheldon Hackney really did not know whether he could support or would support or did not support. And finally had the policies changed.

Imagine what debate would be like under those rules. Imagine the burden you'd feel under those restrictions. You would have to weigh every word carefully. You would start to censor yourself before you even began to speak. You might even decide not to speak at all, because undoubtedly someone would be offended by what you have to say—or might at least claim to be offended.

Now let me ask my colleagues: Are these the rules of debate you would want in the greatest deliberative body in the world?

No, of course not. You would tell me these kinds of restrictions would destroy the very foundations of the Senate; that these kinds of restrictions are unconstitutional; that the best way to destroy offensive ideas is through robust and open debate, not censorship.

You would tell me all this—and you would be right.

You would be right as an American but, more important, you would be constitutionally right because it was the very thing our Founding Fathers wanted to ensure through free speech.

If the day ever comes that one Senator is allowed to dictate to another Senator what is an appropriate subject for debate, or an appropriate word to be used, or an appropriate argument to make, when that day comes, we might as well just close up shop as a deliberative body, lock the door and throw away the key to our freedom—our freedom of speech and our open, free debate.

It may seem unthinkable for speech codes ever to exist in the U.S. Senate, but let me warn my colleagues, it was not many years ago that these kinds of restrictions would have been equally unthinkable on college campuses. The bastion of free thought and what happened? Well, it was not a revolution. Nobody stormed the citadel. There was not any rioting in the streets demanding speech codes. We did not see headlines in newspapers about students being stripped of their rights. No, it was not a war; it was a surrendering. Good, decent, intelligent scholarly people, like Sheldon Hackney, simply opened the door and delivered the college campuses to a kind of intellectual tyranny.

Today, when you talk to many academics, you will be treated to an incredible doublespeak about this very

important issue. I have had college presidents tell me in one breath that speech codes have no effect on students, but they are critically important in maintaining order on campus; if we do not have speech codes, we cannot maintain order and civility. I have heard from one university talk that speech codes cannot constitutionally restrict—certainly not—legitimate classroom discussion. Yet the courts ruled that particular school's speech code to be unconstitutional because it was used to do exactly what it said it was not doing.

I have had scholars tell me that there cannot be free and open discussion in a classroom for the culturally disadvantaged students unless certain words or ideas are censored and not a part of the classroom discussion or the open debate in a forum on campus.

I have had a college president tell me that the university ought to be open to all points of view, even if some of those views expressed are personally wrong, and even cited with pride an example of his support for a riot of a controversial speaker to preach racism and bigotry on his campus. And yet at the same time, that college president imposed speech codes on students of that university. That college president was Dr. Sheldon Hackney.

In his answer to the committee, Dr. Hackney acknowledged that political correctness exists and it would be a serious problem if it were to become the orthodoxy of a campus, shutting out other points of view. How much more orthodox can it be than to become a part of the official student code of a university?

Dr. Hackney instituted the speech code at Penn. It was not long before the court decided such codes were unconstitutional and students objected to them. To his credit, Dr. Hackney responded. He worked with the students and he changed the code. I applaud his willingness to change, but why not abandon the code entirely?

How is it possible for an individual to defend a principle he believes in and betray it at the same time? I think there are only two explanations: Either the individual is misrepresenting his beliefs or he is unable to understand the impact of his action.

I cannot believe that Dr. Hackney would misrepresent his beliefs because Dr. Hackney is a decent and scholarly man. So I can only believe that he is wearing academic blinders, like others in his profession today, who truly believe there is a way to censor some views but not others and say that it is all the time in the name of academic freedom.

My chief concern about this nomination is that Dr. Hackney will not be able to keep those academic blinders off long enough to realize that some of his respected friends and colleagues are enemies of the very freedoms that he is

now going to have to defend in a fair way. With what he himself identifies as more direct control over decisionmaking, that could result in the National Endowment for the Humanities sharply veering off course.

Dr. Hackney, you have your work cut out for you, and I am quite concerned at this moment of who this good, intelligent, scholarly figurehead will be. Will he be the person who arbitrarily restricted free speech and then made a change? Or will he be the stalwart who directs in a fair and balanced way the moneys of this great institution?

Those are the questions at hand, and in the coming weeks and months, I am sure we will know because I expect the doctor to be confirmed. But I will tell you that he is not a strong and decisive captain. He is a man who has allowed his ship to be blown off course by the winds of change and not to remain a stalwart defender of constitutional and basic American principles and rights.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DOLE. I ask unanimous consent to proceed as if in morning business.

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

SALUTE TO EWING KAUFFMAN

Mr. DOLE. Mr. President, a rags-to-riches success story; baseball; a devotion to the philosophy of neighbor helping neighbor; what do these have in common? All three are a unique part of the American culture. And all three were also part of the uniquely American life of Ewing Kauffman, who passed away Saturday in Kansas City, MO.

In 1950, Ewing Kauffman started a pharmaceutical business in the garage of his home. And over the years, Marion Laboratories grew from a one-man operation to a \$1 billion corporation.

Mr. Kauffman said the reason behind his business success could be found in his motto—"Those who produce, share." Mr. Kauffman never used the word "employee," referring to everyone—from vice presidents, to secretaries, to janitors as "associates."

In 1969, Mr. Kauffman earned the affection of the people of Missouri and Kansas, when he purchased a new major league baseball franchise and brought it to Kansas City. And for the past 24 years, the Kansas City Royals have been one of the most successful franchises in baseball.

Under Mr. Kauffman's ownership, the Royals won six American League West-

ern Division titles and made two trips to the World Series, winning the World Championship in 1985.

The Royals were also winners off the field, as well. Mr. Kauffman knew that his team really didn't belong to him; it belonged to the people of the Kansas City area—in fact, for that matter, all the Midwest. And his leadership ensured that the Royals were also available to make appearances on behalf of worthy causes and to reach out to young people.

Young people were also the focus of many of Mr. Kauffman's philanthropic efforts. His Kauffman Foundation financed countless projects, including a program to teach children how to resist peer pressure at the age when they are most vulnerable to involvement with drugs.

Mr. Kauffman also made a life-changing promise to over 1,000 high school freshmen in Kansas City, KS, and in his hometown of Westport, MO—a promise that he would pay the entire cost of their college or vocational training if they steered clear of drugs, alcohol, teenage parenthood, and received their high school diploma.

Mr. President, when Mr. Kauffman was diagnosed with bone cancer, he typically did not think of himself; he thought of others; and he established a trust which would keep the Royals in Kansas City after his death.

Ewing Kauffman is survived by his wife, Muriel, three children, nine grandchildren, and three great grandchildren. He is also survived by countless men, women, and children whose lives are better because of the leadership and generosity of this remarkable American.

SALUTE TO CONGRESSMAN PAUL HENRY

Mr. DOLE. Mr. President, I know that all Members of the Senate join me in extending our sympathies to the family, friends, colleagues, and constituents of Congressman PAUL HENRY of Michigan.

Congressman HENRY passed away Saturday after a courageous fight against brain cancer.

Regarded by many as one of the rising stars of the Republican Party, PAUL HENRY made a career of making a difference in the lives of others.

As a Peace Corps volunteer, he made a difference in the lives of the people of Ethiopia and Liberia.

As a political science professor, he made a difference in the lives of his students.

And as a 5-year member of the Michigan State Legislature and a five-term Member of Congress, PAUL HENRY made a difference for Michigan and America.

Mr. President, I was proud to call Congressman HENRY my friend, and know that I am just one of many in this Chamber who will miss this truly outstanding public servant.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NOMINATION OF RUTH BADER GINSBURG

Mr. HELMS. Mr. President, it had been my tentative inclination prior to this past weekend to vote to confirm Ruth Bader Ginsburg to serve on the U.S. Supreme Court despite disagreement with some of her declarations about constitutional matters and other matters. I have a small habit which I have not been able to break, I am not inclined to break, and I have not tried to break, that is, on each major nomination to come before the Senate I assemble all available information about the nominee including testimony before the committee hearing of his or her nomination.

I did that this past weekend. I spent a part of the weekend reviewing various documents regarding Mrs. Ginsburg, and never have I been more disappointed in a nominee. This lady, whom I have regarded as a pleasant, intellectual liberal is, in fact, a woman whose beliefs are 180 degrees in opposition to some fundamental principles that are important not only to me but, I believe, to the majority of other Americans as well.

Therefore, it would be hypocritical of me to keep silent about Mrs. Ginsburg's beliefs, let alone her nomination to be quietly confirmed by the Senate, like a ship passing in the night.

I confess great disappointment that the Senate Judiciary Committee in conducting the hearing on Mrs. Ginsburg's nomination did not press her on a number of matters—for example, her outrageously simplistic and callous position on abortion. The lady used a great deal of doubletalk and, sad to say, the Judiciary Committee let her get by with it.

Mr. President, I did not find one syllable of challenge by any member of the Judiciary Committee to this outrageous oversimplification by a nominee whose demeanor appeared to be one of amused tolerance of Senators too timid to ask questions that needed to be asked. Why, Mr. President, in the name of God did someone not ask, "But, Mrs. Ginsburg, what about that unborn innocent and helpless child's right to be left alone, that child who is about to be destroyed because of specious reasoning by people like Ruth Bader Ginsburg?"

Mrs. Ginsburg also made such unchallenged declarations as that the Hyde amendment is unconstitutional;

that the implication—that went unchallenged—was that, as a member of the Supreme Court, she is likely to uphold the homosexual agenda; and, three, the States should be required to pay for abortions.

There were other such remarkable assertions. But the able Senator from Pennsylvania, Mr. SPECTER, did put it aptly when he said:

I'm not suggesting that Judge Ginsburg will be defeated, or that she should be, but I am suggesting that her coronation in advance is irresponsible.

And that is putting it mildly, Mr. President.

Let me emphasize, in conclusion, Mr. President, that I hold no personal animus for Mrs. Ginsburg. But based on what she has said, and what she clearly meant, I cannot support her nomination. She will be confirmed, yes. And I may be the only Senator opposing her. But I pray that as a sitting Justice of the Supreme Court, she will rethink some of her positions.

Mr. President, I ask unanimous consent that two items be printed in the RECORD.

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

COALITIONS FOR AMERICA,
Washington, DC, July 23, 1993.

To: Interested parties.

From: Thomas L. Jipping, J.D., Legal Affairs Analyst.

Judge Ruth Bader Ginsburg told the Senate Judiciary Committee on July 20 that her nomination should be evaluated on the basis of her 34-year written record. That record provides a solid, and perhaps even compelling, basis for Senators to vote against her nomination. First, she believes courts should make policy and implement judges' own social vision. Second, her social vision is very liberal. Third, her supporters believe she will work to implement that vision on the Supreme Court.

I. JUDGE GINSBURG BELIEVES THAT COURTS SHOULD MAKE POLICY AND IMPLEMENT JUDGES' OWN SOCIAL VISION

She approves of courts changing their interpretation of the Constitution because of "a growing comprehension by jurists of a pervasive change in society at large."¹

She approves of instances where "[p]ervasive social changes" undermined previous Supreme Court decisions she felt impeded women's right.²

She approves of cases where the Supreme Court "has creatively interpreted clauses of the Constitution * * * to accommodate a modern vision" of society.³

She approves of "[b]oldly dynamic interpretation, departing radically from the original understanding" to achieve certain results.⁴

She believes courts should be restrained only when legislatures are activist.⁵

She believes courts should "repair" or "rewrite" unconstitutional legislation to reach desirable results rather than striking it down and letting legislatures do the legislating.⁶

She testified at her hearing that courts should sometimes act as "interim legislatures."

She believes factors that "tug judges toward the middle" on appellate courts are not present on the Supreme Court, which faces "grand constitutional questions."⁷

II. JUDGE GINSBURG'S SOCIAL VISION IS EXTREMELY LIBERAL

Judge Ginsburg served on the national board of the ACLU when it adopted positions opposing any restrictions on pornography (including child pornography), opposing any restrictions on prostitution, and opposing the criminalization of adult/child sex.

Judge Ginsburg testified during her hearing that she opposes discrimination on the basis of sexual preference.

Judge Ginsburg has written that the Supreme Court's decisions that the Constitution does not require the public funding of abortion are "incongruous"⁸ and represent the "[m]ost unsettling of the losses" for women's rights.⁹

Judge Ginsburg co-authored a report for the U.S. Commission on Civil Rights purporting to identify "Federal laws which allow implicit or explicit sex-based discrimination" and offering recommendations.¹⁰ Her social vision, as outlined in this report, includes:

Drafting women,¹¹ and sending them into combat.¹²

Legalizing prostitution, which she believes is protected by the Constitution.¹³

Lowering the age of consent for sexual acts to 12 years.¹⁴

Terminating all public financial support of 4-H Boys and Girls Clubs,¹⁵ Boy Scouts, Girl Scouts, Boys' Clubs of America, Big Brothers of America, and other organizations until they open their membership to both sexes, change their name by using only sex-neutral language, and purging any activities and purposes that "perpetuate sex-role stereotypes."¹⁶

Single-sex prisons.¹⁷

Replacing fraternities and sororities at colleges and universities with single-sex "social societies."¹⁸

Constitutional protection of bigamy.¹⁹

Judge Ginsburg even included the statute establishing Mother's Day and Father's Day as separate holidays as one that allows "implicit or explicit sex-based discrimination" though did not offer a specific recommendation for correcting this problem.²⁰

III. JUDGE GINSBURG'S ALLIES AND FRIENDS BELIEVE SHE WILL IMPLEMENT HER SOCIAL VISION ON THE SUPREME COURT

On July 22, the woman who replaced Judge Ginsburg as director of the ACLU's Women's Rights Project told PBS that Judge Ginsburg has a definite social vision and will have no restraints on implementing that vision when she gets on the Supreme Court.

On July 20, Eleanor Homes Norton, the District of Columbia's congressional delegate, introduced Judge Ginsburg to the Judiciary Committee and stated that Judge Ginsburg would make great strides for women's rights on the Supreme Court just as she had while an advocate and scholar.

The left-wing Alliance for Justice asserts that any prediction that Judge Ginsburg will be a moderate member of the Supreme Court is "at best premature."²¹ Indeed, the Alliance believes that "it is the battles she fought prior to her service on the bench that portend" the kind of Supreme Court Justice she will be.²²

IV. CONCLUSION

Judge Ginsburg said her nomination should be evaluated on the written record, supplemented by her testimony before the Judiciary Committee. By that standard,

there is ample ground for opposing the appointment of this judicial activist to the Supreme Court. She takes a fundamental political approach to the law, believing that courts can and should work to implement judges' social vision. Her own social vision—the one she will enforce on the Supreme Court—is extremely liberal. Her allies and supporters believe that she will in fact work, in the unconstrained environment on the Supreme Court, to implement that vision in much the same fashion that she pursued her agenda as an advocate.

Any Senator claiming the label "conservative" or even "moderate" will find it difficult to explain voting for someone with such a clearly activist record. Judge Ginsburg's record is more hostile to conservatives than Judge David Souter's record was to liberals. The vote on Souter's 1990 nomination was 90-9.

FOOTNOTES

¹Ginsburg, "Remarks on Women Becoming Part of the Constitution," 6 *Law & Inequality* 17,20 (1988).

²Ginsburg, "Sex Discrimination," in L. Levy, K. Karst & D. Mahoney (eds.), *Encyclopedia of the American Constitution* (1986), at 1667.

³Id. at 1673.

⁴Ginsburg, "Sexual Equality Under the Fourteenth and Equal Rights Amendments," 1979 *Washington University Law Quarterly* 161,161.

⁵Ginsburg, "Inviting Judicial Activism: A 'Liberal' or 'Conservative' Technique?" 15 *Georgia Law Review* 539,550 (1981).

⁶Ginsburg, "Some Thoughts on Judicial Authority to Repair Unconstitutional Legislation," 28 *Cleveland State Law Review* 301 (1979).

⁷Ginsburg, "Styles of Collegial Judging: One Judge's Perspective," *Federal Bar News and Journal*, March/April 1992, at 200.

⁸Ginsburg, "Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*," 63 *North Carolina Law Review* 373,386 (1985).

⁹Ginsburg, *supra* note 2, at 224.

¹⁰U.S. Commission on Civil Rights, *Sex Bias in the U.S. Code* (April 1977). The report states that "the initial research and draft of this report was developed by contractors, Ruth Bader Ginsburg and Brenda Feigen Fasteau." Id. at iii. Fasteau is a former director of the American Civil Liberties Union's Women's Rights Project.

¹¹Id. at 218.

¹²Id. at 26.

¹³Id. at 97.

¹⁴Id. at 102.

¹⁵Id. at 138.

¹⁶Id. at 148.

¹⁷Id. at 101.

¹⁸Id. at 169.

¹⁹Id. at 195-96.

²⁰Id. at 146.

²¹Alliance for Justice, *Report on the Nomination of Judge Ruth Bader Ginsburg to the United States Supreme Court*, at 5.

²²Id. at 2.

[From the Family Research Council,
Washington, DC]

JUDGE RUTH BADER GINSBURG: GROUNDS FOR QUESTIONS

(By David M. Wagner, Director of Legal Policy)

In choosing Appeals Court Judge Ruth Bader Ginsburg for the U.S. Supreme Court, President Clinton has achieved a triple goal: An easy confirmation process; political credit for selecting a "moderate"; and a probably reliable liberal vote on key social issues, with the legal acumen to make her opinions influential.

In deciding whether to oppose Judge Ginsburg's confirmation, conservative and pro-family groups have to weigh how much worse Clinton's selection could have been, against how much damage can be done by a careful liberal jurist with a non-negotiable commitment to far-reaching, if slow-paced, social change.

This paper will set forth some areas of Judge Ginsburg's record that should provide material for questioning when she appears before the Senate Judiciary Committee, or for the casting of an informed vote by members of the Senate.

GINSBURG ON ABORTION

It is being said that Judge Ginsburg has "criticized *Roe v. Wade*." Technically this is true; in fact, her most recent "criticism" of *Roe* came in a speech delivered just last March, shortly before Justice Byron White announced his intention to resign. That speech may well account for the absence of Judge Ginsburg's name from most observers' lists of possible nominees throughout April and May.

However, in these "critiques" of *Roe* there is actually less than meets the eye. Judge Ginsburg's criticisms of *Roe* are basically two:

1. By laying down a framework for all subsequent abortion law, the Court in *Roe* forced a more rapid reform than most state legislatures were willing to allow, thereby strengthening the right-to-life movement. Had the Court been content merely to strike down the Texas statute that was at issue in *Roe*, without announcing the rigid "trimester" system, the pro-abortion drift of the state legislatures would have continued without interruption. In other words, Judge Ginsburg criticizes *Roe* for being a less effective vehicle for abortion rights than it could have been.

In her recent speech she noted that *Roe* "halted a political process that was moving in a reform direction and thereby, I believe, prolonged divisiveness and deferred stable settlement of the issue."¹ And she wrote in a 1990 article: "There was at the time [of *Roe*], as Justice Blackmun noted in his opinion, a trend 'toward liberalization of the abortion statutes.' Had the Court written smaller and shorter, the legislative trend might have continued in the direction in which it was clearly headed in the early 1970s."²

Furthermore, as she noted in a 1985 article based on a 1984 speech: "The sweep and detail of the opinion stimulated the mobilization of a right-to-life movement and an attendant reaction in Congress and state legislatures."³

2. *Roe* grounded the abortion right on personal privacy and autonomy, rather than on sex discrimination. In contrast, Judge Ginsburg believes the Court should have grounded the abortion right on the theory that, since only women become pregnant, all restrictions on abortion discriminate on the basis of sex, and therefore violate the Equal Protection Clause of the Fourteenth Amendment. Closely allied to this legal argument is the overtly political argument that abortion is necessary to the civic and professional equality of women.⁴

Displaying her penchant for announcing her own views by quoting approvingly from others, Judge Ginsburg wrote in 1985:

"Professor Paul Freund explained where he thought the Court went astray in *Roe*, and I agree with his statement. The Court properly invalidated the Texas proscription, he indicated, because '[a] law that absolutely made criminal all kinds and forms of abortion could not stand up; it is not a reasonable accommodation of interests.' * * *

"I commented at the outset that I believe the Court presented an incomplete justification for its action. Academic criticism of *Roe*, charging the Court with reading its own

values into the due process clause, might have been less pointed had the Court placed the woman alone, rather than the woman tied to her physician, at the center of its attention. Professor Karst's commentary is indicative of the perspective not developed in the High Court's opinion: he solidly linked abortion prohibitions with discrimination against women. The issue in *Roe*, he wrote, deeply touched and concerned 'women's position in society in relation to men.'⁵"

It should be particularly noted that, while some abortion regulations survive scrutiny under the *Roe* test as modified by *Planned Parenthood v. Casey*,⁶ Judge Ginsburg's equal protection analysis would strike down any and all abortion regulations (though a ban on sex-selection abortion might present an arguable question for her), on the theory that any and all abortion regulations create unequal burdens on women and men.

Judge Ginsburg also points out that her theory would even require striking down the Hyde Amendment—i.e., it would require the federal government to fund abortions. She wrote: "If the Court had acknowledged a woman's equality aspect, not simply a patient-physician autonomy dimension to the abortion issue, a majority might perhaps have seen the public assistance cases as instances in which, borrowing a phrase from Justice Stevens, the sovereign had violated its 'duty to govern impartially.'"⁷

Thus, just at the time the Clinton administration is fine-tuning its health care plan and proposing to include abortion coverage in it, the court is getting a new Justice who believes the Constitution requires the federal government to fund abortion.

GINSBURG ON JUDICIAL METHOD

Another claim made about Judge Ginsburg is that she is a believer in, and a practitioner of, judicial restraint. But as Thomas Jipping of the Free Congress Foundation points out, one must distinguish between judicial restraint as a principle and judicial restraint as a style.

Judge Ginsburg's record includes many praiseworthy instances of judicial restraint. For instance, in a case involving a homosexual serviceman who argued that the military's policy on homosexuals violated his constitutional right to privacy, Judge Ginsburg concurred with her D.C. Circuit colleagues in turning down the plaintiff's petition for en banc review of the panel opinion rejecting his claim.⁸ At that time, the Supreme Court had not yet definitively ruled on whether homosexual acts were covered by the constitutional right of privacy,⁹ so in theory, Judge Ginsburg could have voted in favor of making some new law in this area. She did not do so. Judicial restraint is clearly part of her judicial style.

However, her career as the chief activist-litigator for the ACLU's Women's Rights Project was dedicated to persuading the courts that the language of the 14th Amendment requires a social revolution beyond anything that those who wrote and ratified the 14th Amendment dreamed of. This is the essence of judicial activism—the theory that the words of the Constitution are blank check to be filled in by judges, in light of whatever understanding they have of what contemporary thinking demands or what contemporary society needs. This form of judging necessarily entails the substitution of the values of federal judges—which for demographic reasons tend to be the values of the "knowledge class"—for the values of the rank and file of the American people.

In a brief paper given as part of a Federalist Society conference,¹⁰ Judge Ginsburg de-

fended the Supreme Court's sex-equality decisions of the 1970s primarily by pointing out how overwhelmingly the Burger Court adopted the view of the Equal Protection Clause that Ginsburg, as advocate, had promoted, and by suggesting how unjust would be the predicament of women today had those decisions not come down the way they did. Apparently her view is that judicial activism (at least where sex equality is concerned) is justified by its high degree of support on the Court, and by its good results.

In her 1981 *Georgia Law Review* article,¹¹ Judge Ginsburg seeks to debunk the view that judicial activism is exclusively a tool of political liberals, by pointing out instances in which conservatives have repaired to the courtroom to seek to reverse a legislative or executive outcome, e.g. over the Panama Canal issue, and over President Carter's termination of the mutual defense treaty with Taiwan.¹²

The article concludes with a solemn warning against "attempts to politicize the judiciary,"¹³ in which Judge Ginsburg's prime exhibit is the testimony given by a conservative organization, United Families of America, in opposition to her own confirmation for her present seat on the Court of Appeals for the D.C. Circuit.¹⁴

UFA had suggested to the Judiciary Committee a list of questions for judicial nominees. Some of these questions were such that, in our view, a responsible nominee would have to decline to answer them, because to answer would be to make a premature commitment to a given outcome on an issue likely to come before the court.¹⁵ The view that demanding outcome commitments from a judicial nominee amounts to an unacceptable politicization of the judiciary is bedrock conservative legal doctrine—a point that Judge Ginsburg hammers home by backing up her critique of the UFA questions with a quote from then-Justice Rehnquist.¹⁶

But before we give Judge Ginsburg a standing ovation and a leatherbound copy of *The Federalist Papers*, one might ask: did the politicization of the judiciary start with UFA's little list? From the vantage point of 1981, after two decades in which American society was significantly remade by judicial decisions reading the liberal agenda into the Fourteenth Amendment, is it not a touch disingenuous to imply that the threat of a politicized judiciary comes primarily from the conservatives? Especially when one happens to have been the legal architect of a portion of the judicial revolution? Does not this sort of argument suggest the presence of an unconfessed but powerful commitment to the liberal agenda?

The evidence suggests that judicial restraint is part of Judge Ginsburg's judicial style, but not part of her judicial philosophy; that she is cautious in her rulings, but does not believe that the judiciary has any overarching obligation to refrain from reading liberalism into the Constitution.

GINSBURG, THE ACLU, AND STATUTORY RAPE

According to a transcript obtained and quoted by the conservative weekly *Human Events*, the ACLU, honing down its position on homosexual rights at a board meeting in December 1975, adopted the view that the state has a legitimate interest in "protecting children from sexual abuse, an interest underlying some laws concerned with sexual conduct between adults and minors."¹⁷

This was substitute language. The first draft had articulated the state's interest in somewhat stronger terms: "[t]he state has a legitimate interest in controlling sexual behavior between adults and minors by criminal sanctions."¹⁸

Footnotes appear at end of article.

The change is explained in the transcript as follows:

"In the second paragraph of the policy statement, dealing with relations between adults and minors, Ruth Bader Ginsburg made a motion to eliminate the sentence reading: 'The state has a legitimate interest in controlling sexual behavior between adults and minors by criminal sanctions.' She argued that this implied approval of statutory rape laws, which are of questionable constitutionality.¹⁹"

Assuming that the scribe faithfully recorded then-Prof. Ginsburg's objection to the stronger anti-pederasty language, the transcript still does not tell us what her constitutional argument against statutory rape laws was or is. But given the predominance of the theme of sex-equality in her constitutional writings, it is not fanciful to assume that she objects to the different ages of consent for girls and for boys that are typically found in such statutes. But surely such "discrimination" reflects a judgment by the legislators that young women are more in need of protection against what we would now call sexual harassment than young men are. Is this an unconstitutional policy judgment, requiring that our statutory rape laws be overthrown?

By no stretch can then-Prof. Ginsburg's intervention here be read as supportive of pedophilia. As noted, she was concerned with an appearance of endorsement for statutory rape laws that she considered unconstitutional.

Nonetheless, the Judiciary Committee should ask her to clarify the views reflected in this transcript.

GINSBURG AS FEMINIST BLUE-PENCILLER

Attention has already been called to Judge Ginsburg's preference for adopting the statements of others, rather than announcing her views in her own words. Yet, despite the debt that she implicitly acknowledges to those whom she approvingly quotes, she nonetheless feels that their choice of words is in need of updating, in light of the rules laid down by "political corrections."

Thus, in her article in the Georgia Law Review,²⁰ she quotes from Judge Carl McGowan on the subject of legislators becoming plaintiffs. Judge McGowan describes this sort of plaintiff as "a legislator who has failed to persuade his colleagues."²¹ In Judge Ginsburg's quotation of this line, however, the words "or her" have been added in brackets between the word "his" and the word "colleague."²²

Likewise, she quotes Judge Irving L. Goldberg defending judicial activism in some circumstances. As quoted by Judge Ginsburg, Judge Goldberg said that "the [judicial] fire[fighters] must respond to all calls."²³ Judge Ginsburg has added the word "judicial" in brackets, just to clarify that Judge Goldberg was invoking a metaphor for judging rather than defining the duties of fire departments.

Thus, in order to steal a glance at the original phrase as written by Judge Goldberg, the eye is inclined to suppress the word "judicial". Continuing with this procedure, the eye then also suppresses the word "fighters," since this is also in brackets. We therefore seem to have Judge Goldberg saying "the fire must respond to all calls," which makes very little sense. But then, one realizes shrewdly that Judge Ginsburg is not adding the word "fighters," but changing "firemen" to "firefighters."

A few pages further on, faced with a politically incorrect usage by such an exalted fig-

ure as Supreme Court Justice Felix Frankfurter, the blue pencil hesitates. The result is that we find Justice Frankfurter quoted as saying: "There is a good deal of shallow talk that the judicial robe does not change the man [and today we would add, or woman] within it * * *"²⁴

Perhaps it is the appeals court judge's deeply engrained respect for "Higher Authority"²⁵ that keeps Judge Ginsburg from simply dropping "[or woman]" straight into the text, without the patronizing apology for the benighted era in which Justice Frankfurter lived and which he was evidently unable to transcend. (Further on in the passage, Judge Ginsburg does in fact drop in an unadorned "[or women]", when Frankfurter discussed how "men are loyal to the obligation with which they are entrusted."²⁶

Only once in this article does Judge Ginsburg forgo an opportunity to correct a politically incorrect usage. This lapse of vigilance occurs when she quotes from Gilbert and Sullivan's opera *Iolanthe*; specifically, from Private Willis' observation that the brainlessness of most modern members of Parliament may be a good thing after all, because:

"* * * [the prospect of] a lot of dull MPs

In close proximity,
All thinking for themselves, is what
No man can bear with equanimity."²⁷

The judge's decision to withhold her legislative hand at this point is probably due less to reverence for fellow-lawyer W. S. Gilbert's text than to a commendable regard for scan-

There are many possible views on the propriety of enforcing gender-neutral language. Our only point here is that it takes a high degree of partisan zeal to deny to a peer the right to choose his own words, and to insist instead that everyone's usage be made to conform to a given ideological imperative, however noble. A conservative jurist exhibiting similar zeal for his own cause would be subjected, both in the media and by the Senate Judiciary Committee, to a searching inquiry as to his judicial temperament.

CONCLUSION

Let us return to the passage by Justice Frankfurter, quoted by Judge Ginsburg in her Georgia Law Review article. It reads (without Judge Ginsburg's edits):

"There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted."²⁸

To the extent that Judge Ginsburg is here engaging in her well-tested practice of stating her own views through quotation of others, we take heart. Even the most activist of attorneys is capable of making the transition to the very different mindset of the judge, and Judge Ginsburg's own career is an example of the transition.

Nonetheless, it would be an abdication of a grave responsibility if Senators, especially those of the opposition party, fail to ask her questions about, *inter alia*:

What regulations of abortion, if any, would survive a consistent application of the test she outlined in her North Carolina Law Review article (note: she could answer this without committing herself to using that test as a Supreme Court Justice);

What the original intent behind the Fourteenth Amendment was, and how, if at all,

this intent should influence constitutional judging today;

What the principles that undergird judicial restraint are, and how she has or has not lived up to those principles.

Far from a fire-breathing ideologue of the left, but a committed liberal nonetheless—that is our impression of Judge Ginsburg, based on her writings, and that is how we expect she will appear after questioning by the Judiciary Committee. The President who appointed her, and the Senators who will probably vote to confirm her, should receive both full credit and full blame for what they are presently rushing to do.

FOOTNOTES

¹ Ginsburg Lament *Roe's Lack of Restraint*, LEGAL TIMES, April 5, 1993, at 11.

² Ginsburg, *On Muteness, Confidence, and Collegiality: A Response to Professor Nagel*, 61 U. OF COLO. L.REV. 715, 718-719 (1990).

³ Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 NORTH CAROLINA LAW REVIEW 375, 381 (1985).

⁴ A majority of the present Court has already endorsed this view; see *Planned Parenthood v. Casey*, 11 S.Ct. 2791, 2809 (1992).

⁵ Ginsburg, supra n.3, at 381, citing Freund, *Storms over the Supreme Court*, 69 A.B.A. J. 1474, 1480 (1983) (adapted from inaugural Harold Leventhal Lecture at Columbia Law School), and Karst, *Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV.L.REV. 1, 53-59 (1977), at 58.

⁶ *Casey*, supra n.4.

⁷ Ginsburg, supra n.3, at 385 (citing *Harris v. McRae*, 448 U.S. at 357 (Stevens, J., dissenting)).

⁸ *Dronenburg v. Zech*, 746 F.2d 1579 (1984) (order on appellant's suggestion for rehearing *en banc*).

⁹ See *Doe v. Commonwealth's Attorney*, 425 U.S. 901, 96 S.Ct. 1489 (1976), *aff'g mem.* 403 F. Supp. 1199 (E.D. Va. 1975). *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841 (1986), had not yet been decided at the time of the *Dronenburg* litigation.

¹⁰ Ginsburg, *Interpretations of the Equal Protection Clause*, 9 HARV.J.L.&PUB.POL. 43 (1986). The Federalist Society is a nationwide organization of conservative and libertarian lawyers, law students, and law professors. Greatly to her credit, Judge Ginsburg has been a frequent participant in conferences sponsored by the Federalist Society and other conservative groups.

¹¹ Ginsburg, *Inviting Judicial Activism: a "Liberal" or "Conservative" Technique?*, 15 GEORGIA L.REV. 539 (1981).

¹² *Id.* at 542.

¹³ *Id.* at 553.

¹⁴ *Id.* at 553-4, citing: Hearing before the Senate Committee on the Judiciary on the Nomination of Ruth Bader Ginsburg for United States Circuit Judge, Statement of Sandy MacDonald on behalf of United Families of America (June 4, 1980) (typescript copy).

¹⁵ *Id.* Examples of overly-specific questions on the UFA list were questions on busing, parental consent for abortion, and rescission of ERA ratification. On the other hand, at least one UFA question cited by Judge Ginsburg—"What principles ought federal judges to follow in deciding social policy cases?"—can and should be answered fully by even the most scrupulous nominee.

¹⁶ *Id.* at 554-5, citing Rehnquist, *Act Well Your Part: Therein all Honor Lies*, 7 PEPPERDINE LAW REVIEW 227, 229-30 (1980).

¹⁷ How "Moderate" is Ruth Ginsburg?, HUMAN EVENTS, June 26, 1993, at 1.

¹⁸ *Id.*

¹⁹ *Id.* at 17.

²⁰ Ginsburg, supra n. 11.

²¹ *Id.* at 542, citing McGowan, *Congressmen in Court: The New Plaintiffs*, *id.* at 241.

²² *Id.* at 542.

²³ *Id.* at 547, citing Reynolds v. Allstate Insurance Co., 629 F.2d 1111, 1112 (5th Cir. 1980).

²⁴ *Id.* at 555, citing Public Utils. Comm'n v. Pollak, 343 U.S. 451, 466 (1952).

²⁵ See *Dronenburg v. Zech*, 746 F.2d. 1579, 1581, n. 1 (D.C. Cir., denial of request for rehearing *en banc*, 1984) (Ginsburg, J., concurring).

²⁶ *Supra* n. 15.

²⁷ *Id.* at 557 (cited in prose, beneath indented passage). See GILBERT & SULLIVAN, *IOLANTHE*, ACT II (1882) (Aria: "When All Night Long").

²⁸ *Supra* n. 15.

Mr. HELMS. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

DEPARTMENT OF JUSTICE

NOMINATION OF ELEANOR ACHESON TO BE AN ASSISTANT ATTORNEY GENERAL

Mr. BIDEN. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to the nomination of Eleanor Acheson; that any statements be inserted in the RECORD as if read; that time on both sides be yielded back; and that the nominee be confirmed. That is my unanimous-consent request, and this request has been cleared by the minority.

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

The nomination was considered and confirmed as follows:

DEPARTMENT OF JUSTICE

Eleanor Acheson, of Massachusetts, to be an Assistant Attorney General.

Mr. PRESSLER. Mr. President, today, we take up the nomination of Eleanor Acheson, who has been nominated to be Assistant Attorney General for Policy Development. Until recently, Ms. Acheson belonged to an exclusive club in the Boston area perceived by some to discriminate in their admissions practices. Let me make one point very, very clear: it has never been my intent to condemn either Ms. Acheson or the club to which she belonged. Indeed, I have not held up her nomination for even 1 day. However, as a new member on the Judiciary Committee, I am puzzled as to what standard to apply to this nomination with respect to her membership in this club.

Mr. President, I see the distinguished chairman of the Judiciary Committee, Senator BIDEN, on the floor and would like to discuss with him the issue of membership of judicial and executive branch nominees in clubs which discriminate, or which are alleged to discriminate. This issue is not new. Many times in the past, the Judiciary Committee has wrestled with this issue, but the issue is far from settled. Recent nominations demonstrate that club membership is an issue which will not go away and needs additional attention.

In August 1990, the Judiciary Committee unanimously adopted a resolution concerning membership in clubs

that engage in discrimination. The resolution applies to clubs that intentionally discriminate on the basis of race, color, religion, sex, disability, or national origin. Membership in such discriminatory clubs is considered inappropriate for persons who desire to serve in the Federal judiciary or the Department of Justice because such club membership conflicts with the appearance of impartiality required of such persons. However, membership in a discriminatory club can be mitigated if the nominee is actively engaged in bona fide efforts to eliminate the discriminatory practices.

The resolution applies to clubs that intentionally discriminate. Therefore, before the provisions of the resolution can be invoked, an initial showing of intentional discrimination must be made. However, the term "intentionally discriminate" is not defined. The resolution begs the question as to the meaning of this term. Senators are left without further guidance to make the determination as to whether or not a given club is discriminatory. Therein lies the rub. As a result, it is easy for a Senator to use an otherwise non-partisan resolution for partisan political purposes.

As I said earlier, I was not a member of the committee at the time of its adoption. I did not join until this year. However, since the passage of the resolution, several nominees—some Republicans, some Democrats—who belonged to allegedly discriminatory clubs have come before the committee. I am concerned that the committee treat all nominees consistently.

My intent is not to revisit past nomination battles. Nor do I wish to start a debate about past and present nominees. Committee standards should be applied uniformly. My goal today is to clarify what the rules are for future nominees. What message are we sending them? Under what circumstances will their membership in a club be used against them? What behavior is appropriate? When must they resign?

Mr. President, could the chairman explain for me the standard to be applied to judicial nominees who have a club problem?

Mr. BIDEN. Mr. President, let me review for the Senator from South Dakota the way the Judiciary Committee has handled the issue of discriminatory clubs.

In August 1990, the Judiciary Committee unanimously passed a resolution stating that it was the sense of the committee that it was inappropriate for a nominee to maintain membership in:

Clubs where business is conducted that by policy or practice intentionally discriminate on the basis of race, color, religion, sex, disability or national origin.

The resolution states that such membership is inappropriate: "Unless such persons are actively engaged in bona

fide efforts to eliminate the discriminatory practices.

In determining whether a club intentionally discriminates, the committee has asked the following types of questions:

1. Do the club's by-laws contain provisions that limit privileges of members based upon their race, color, religion, sex, disability or national origin?

2. Does the club intentionally discriminate through its practices? For example, does it discriminate in its guest policy?

3. Next we ask whether any African-Americans, women or other minorities have applied for, and been turned down for, membership and the reasons therefore?

4. Also relevant would be whether the club has indicated any willingness to accept African-Americans or other minorities as members.

Once the committee investigators compile the information, it is circulated to members of the committee who then determine whether they are concerned about the nominee's membership in the club.

Of course, any Senator is free to make a decision based on whatever factors he or she wishes to take into account, subject only to the constraints of the Constitution, Federal law, the Senate rules, and the dictates of that Senator's conscience. In particular, the committee's resolution states that a nominee's "Membership is an important factor which Senators should consider in evaluating such persons, in conjunction with other factors which may reflect upon their fitness and ability."

The resolution does not, and indeed it cannot, require a Senator to vote in accordance with its terms.

One final note. Senator GRASSLEY, in an effort to avoid risking setting up some elaborate title VII-type regime that we are clearly unable to fairly administer suggested, and the committee agreed, that questions of intentional discrimination be determined by review of a club's policy and practices.

Mr. PRESSLER. Mr. President, I thank the chairman for his explanation. It is helpful to me. However, let me ask Senator BIDEN another question.

During the 1991 confirmation hearing of a nominee who belonged to an allegedly discriminatory club, one Member on your side of the aisle said that the committee's investigation of the nominee's club "suggests that it had a longstanding practice of discrimination against blacks and Jews, or at the very least there was a widespread perception of such discrimination." Another Senator on your side of the aisle apparently shared this view. When voting against that nominee, he stated, "it is the community perception, the appearance of justice, which is the cornerstone of both the ABA canon and the Judiciary Committee resolution on discriminatory clubs."

These remarks about the perception of discrimination by the community

trouble me. They imply that even if no actual evidence of intentional discrimination is demonstrated, a nominee's membership in a club perceived to be discriminatory could nonetheless be used as a reason to vote against the nominee. If that is the case, then the committee's resolution is rather useless and we are right back to politics as usual.

Mr. President, let me ask the committee chairman whether it is his belief that the mere perception of discrimination, without evidence of intentional discrimination, is sufficient proof to trigger the provisions of the resolution?

Mr. BIDEN. In my view, that a club is perceived as being discriminatory does not, in and of itself, disqualify anyone under the terms of the committee resolution. Such a perception can be a clue that a club's policies and practices need to be scrutinized by the committee—but perception is not, in and of itself, disqualifying.

Again in my view, the nominee referred to by the Senator from South Dakota was not rejected by the Judiciary Committee solely because of his club membership. Far from it. He was denied a Federal Appeals Court position because, in my view and in the view of other members of the committee, he demonstrated a pattern of insensitivity to racial issues and an alarming disregard for precedent. I recognize that several other committee members strongly disagree with those criticisms of the nominee.

However, I do not need to review the details of that case. The reasons my colleagues and I voted against the nominee are clearly explained in the RECORD.

Mr. PRESSLER. So, if I understand the chairman correctly, he is saying that perception alone is not enough to trigger the resolution.

Mr. BIDEN. In my view, perception by members of the community that the club in question engages in discrimination is not, in and of itself, enough to satisfy the club's resolution provision regarding intentional discrimination.

Mr. PRESSLER. In light of the chairman's response, would that mean that perception, in and of itself, does not trigger a thorough investigation of a club's policies and practices?

Mr. BIDEN. As long as this Senator is chairman, the Judiciary Committee will regard all indications of discrimination with the seriousness they deserve. The committee will fully investigate all such allegations which are brought to its attention. However, if the Senator from South Dakota is asking whether witnesses will always be invited to testify whenever any allegation of discrimination is made against a club, the answer is "No."

Mr. PRESSLER. Mr. President, let me pose another question by way of a hypothetical: if a nominee who were to

come before the committee belonged to a club whose bylaws contained discriminatory provisions but the nominee was actively engaged in good faith efforts to eliminate the discriminatory provision, if the nominee had been unable to accomplish the change at the time of his or her nomination, would the nominee be expected to resign from the club?

Mr. BIDEN. It is difficult to respond absent additional information about the club's practices. There is no hard and fast answer to the question. As I stated earlier, the resolution is a guide. Each Senator would have to determine whether the nominee truly did engage in good faith efforts to remedy intentional discrimination at the club. If the determination is that the nominee is making a bona fide effort, but is thus far unsuccessful, each Senator would have to accord whatever weight each feels is appropriate to that mitigating factor. The resolution does not dictate with clarity or specificity circumstances under which a nominee would be required to resign from a discriminatory club. The resolution only states that "membership in a discriminatory club is an important factor which Senators should consider in evaluating such persons, in conjunction with other factors which may reflect upon their fitness and ability."

Perhaps an example of an analogous situation would be helpful. Recently, a nominee was confirmed by the Judiciary Committee and the Senate and now sits as a Federal District Court judge. He belonged to an all male aviation fraternity, which although technically not within the ambit of the club's resolution, had a troubling provision in its "code".

This code provision made it clear that women and non-pilots were not allowed to attend organization meetings or parties under any circumstances other than in the capacity of professional entertainers.

Although this individual was unaware of the specific bylaw provision until just before the hearing, at his hearing he was asked—and agreed—to resign his membership from the club.

Mr. PRESSLER. Again, I thank the chairman. His comments are helpful to me in understanding the standard to apply in these cases. Our discussion today has clarified how the rules would apply to clubs which have the perception of discrimination but no evidence of intentional discrimination. To ensure that the committee's standards are applied to nominees in a non-partisan manner, I stand ready to work with the chairman or any other committee member to further clarify other problem areas regarding this issue.

Mr. METZENBAUM. Mr. President, I rise to support the nomination of Eleanor Acheson to be Assistant Attorney General for Policy Development at the U.S. Department of Justice.

Ms. Acheson is highly qualified to hold this important post and should be confirmed by this body without delay.

It is clear to me that Ms. Acheson developed a sharp legal mind through her work as a civil litigator in private practice. However, what impressed me the most about Ms. Acheson is that she devoted herself to the kinds of pro bono legal work that made the city of Boston a better place to live, despite the heavy demands of private practice.

I was particularly impressed with Ms. Acheson's 12 years of work as counsel and a member of the board of directors for Women, Inc., a residential rehabilitation program for drug and alcohol addicted women and their children. In addition, Ms. Acheson actively recruited other lawyers to serve the community. She received an award from the Boston Bar Association in 1991 for initiating a pro bono program for lawyers at her firm.

Ms. Acheson's commitment to law and to her community will serve her well as head of the office of policy development. This office helps to select Federal judges and U.S. attorneys. It also plays a crucial role in developing and advancing the Department's policy initiatives. That means that Ms. Acheson will be working with experts both inside and outside the Department of Justice to develop the Department's response to some of the most pressing problems facing this country.

One of the most difficult tasks Ms. Acheson will face is developing innovative crime prevention programs that stress prevention and early intervention. As sponsor of the Brady handgun control bill and a ban on semiautomatic assault weapons, I appreciate keenly the importance of developing sensible programs to prevent our Nation's youth from turning to crime and violence as a way of life. I believe that Ms. Acheson's work on behalf of the victims of crime and violence will give her a real-world view of how to tackle those very difficult problems.

I am aware that Ms. Acheson has been criticized by some for belonging to a private club in Boston that currently has no black members. Whatever you think about that criticism, the fact is that it has generated an outpouring of support for Ms. Acheson from the people whose lives she has touched, including many people of color. I was particularly struck by a letter from the president of the Boston chapter of the coalition of 100 Black Women. She wrote:

I cannot believe there is any question about [Ms. Acheson's] commitment to equality and fairness. This is a woman who has gone to bat for Roxbury Community College as a trustee and many individuals of color in this community. Eldie's list of outstanding contributions in Boston's communities of color go on and on.

I, for one, have no doubt that Ms. Acheson is committed to equal justice for all people regardless of their race. I

urge my colleagues to join me in voting to confirm her to be the next Assistant Attorney General for Policy Development at the U.S. Department of Justice.

Mr. KENNEDY. Mr. President, I strongly support the nomination of Eleanor Dean Acheson to be Assistant Attorney General in charge of the Office of Policy Development in the Department of Justice.

Following her graduation from Wellesley College and George Washington University Law School, Ms. Acheson served as a law clerk to Judge Edward Gignoux on the Federal district court in Maine. Since 1974, she has been with the Boston law firm of Ropes & Gray, where she earned an excellent reputation as a skillful, effective, and conscientious attorney and litigator.

Ms. Acheson has also made very significant contributions to the lives of the less fortunate in her community. Since 1987, she has served as a trustee of Roxbury Community College in Boston's African-American community. The president of that college, Dr. Grace Carolyn Brown, wrote to the Judiciary Committee in strong support of Ms. Acheson's nomination and her "continuing commitment to access and quality education for minorities and communities of color."

Ms. Acheson also provided pro bono representation for 12 years to Women, Inc., a residential treatment facility for women suffering from drug or alcohol dependence that serves predominantly women of color. And she has been an effective advocate within the Boston Bar for community service by private lawyers. In 1991, Ms. Acheson earned the pro bono award of the Boston Bar Association's Committee on Public Interest Involvement.

Questions were raised by one member of the Judiciary Committee regarding Ms. Acheson's former membership in The Country Club of Brookline. In August 1990, the Judiciary Committee unanimously passed a resolution which I proposed along with several of my colleagues, setting forth the sense of the committee regarding membership in clubs that are alleged to engage in discrimination. That resolution, which took effect in January 1991, provides that:

It is inappropriate for a person who may be nominated to a position on the federal bench or at the Justice Department to belong to a club where business is done that by policy or practice intentionally discriminates on the basis of race, color, religion, gender, national origin or disability, unless the person is actively involved in good faith efforts to tend the discrimination.

As it does whenever there is an allegation regarding a club membership, the Judiciary Committee investigated the club to which Ms. Acheson belonged did not discriminate.

Ms. Acheson was a member of The Country Club of Brookline from 1985

until she moved to Washington in March to work for the Justice Department. That club has accepted an African-American member, who is now on the waiting list to join, along with other persons who were accepted for membership before he was.

Another African-American, Deval Patrick, a prominent attorney in Boston and a former civil rights lawyer for the NAACP Legal Defense and Educational Fund, has been invited three times to join the club. He wrote to the Judiciary Committee to confirm these facts. His letter states:

I am familiar with the club, have been a guest there on many occasions, and have even been invited three times to join. As a product of the South Side of Chicago, I still find it difficult to imagine myself as a golfer, and so have chosen to decline. But if I am any indication, the club does not have a commitment to the exclusion of African Americans. Although membership certainly appears to have been rather narrow in the past, I understand that I am not alone among African Americans in having been invited to join.

Mr. Patrick is fully supportive of Ms. Acheson's nomination.

African-Americans have been frequent guests at the club and have reported that they have encountered no discrimination. My office received a letter from Roscoe Trimmier, a partner at the law firm of Ropes & Gray. Mr. Trimmier states:

I am an African American and longtime resident of Newton and Brookline. I am not aware of any exclusionary policy regarding membership or guest privileges at the Country Club. I have on a number of occasions attended Ropes & Gray office functions and other social gatherings at the Country Club. At no time have I experienced any hostility or felt the least bit uncomfortable in the Club surroundings. Quite the contrary, I have been made to feel most at ease and cordially received by members and non-members alike. I am also aware of several members of the minority community to have used the Club facilities as guests of members and who have reported that they experienced only friendship and hospitality in a congenial atmosphere.

Mr. Trimmier fully supports Ms. Acheson's nomination.

It is true that until 1989, the club admitted women only as associate members, not full members. That policy changed in 1989, and the committee investigators have determined that many women are full members. Ms. Acheson communicated with club officers about the need for changing that policy.

Some have suggested that the Judiciary Committee is applying a double standard to the Acheson nomination. That is sheer nonsense.

President Bush's nominee to be Assistant Attorney General in charge of the Criminal Division, Robert Mueller, was a member of the Country Club of Brookline, when he was confirmed by the Judiciary Committee and the Senate in the fall of 1990. I know Mr. Mueller; he is a talented lawyer, and I was pleased to support his nomination.

But there was no criticism of Mr. Mueller's membership in the same club. According to the committee staff, during the past 6 years, many nominees—more than a dozen—who had belonged to clubs with few minorities were confirmed where there was evidence that the club in question did not discriminate.

The President of the National Women's Political Caucus, Harriett Woods, addressed this issue in a letter she wrote to the Judiciary Committee:

For any Senator to raise the issue of [Ms. Acheson's] associate membership in the Country Club in Brookline is to apply a double standard. At least one earlier male nominee was confirmed by the Senate Judiciary Committee without any criticism of his full and continued membership in the very same club. It is a particularly cynical maneuver to raise such an issue about Eldie because her life demonstrates a deep commitment to minority and women's rights. Her associate membership at Brookline in the late 1980s helped to open up the club to subsequent full membership for women. She supported efforts to increase the number of club members of color.

The National Women's Political Caucus recognized that if there is a double standard being used, it is being used by those who are seeking to cast aspersions on this very talented nominee.

Some have also sought to compare Ms. Acheson's nomination to that of Judge Kenneth Ryskamp to the Court of Appeals for the Eleventh Circuit. The Judiciary Committee defeated Judge Ryskamp's nomination, in part because of his longstanding membership in the Riviera Country Club, which has been repeatedly singled out in the press for its discrimination against Jews, blacks, and Hispanics.

Sitting Federal judges have long been barred from being members of clubs that practice invidious discrimination. The Coral Gables City Commission refused to hold public functions at the club, at a time when Ryskamp was a sitting Federal judge and a member of the club. Judge Ryskamp resigned the week before his 1991 confirmation hearing, at a time when the club still had no black members.

The committee also defeated Judge Ryskamp's nomination because of a number of highly insensitive comments he made, both on the bench and in connection with his confirmation. He said to the plaintiff in a civil rights case, who had had his testicles brutally torn by police dogs:

It might not be inappropriate to carry around a few scars to remind you of your wrongdoing in the past ***.

He told Senator SIMON's staff that "in Miami you send out two wedding invitations, one with Anglo time for Anglos and another for Cubans, Cubans always show up two hours later."

And in Fullington versus Wells Fargo, Judge Ryskamp found that a statement by a supervisor that he was—"going to get that Black son of a

bitch"—was not direct evidence of racial discrimination.

While sitting on the Federal bench, Judge Ryskamp showed shocking insensitivity to discrimination, both in court and in his community. By contrast, Eldie Acheson has fought discrimination, and sought to build bridges across racial lines in her community.

Eldie Acheson will bring to the Office of Policy Development intelligence, energy and a deep commitment to securing for all Americans the Constitution's great promise of equal justice under law.

I commend President Clinton for selecting her, and I urge that her nomination be promptly confirmed.

And I ask unanimous consent that copies of all the letters I have referred to be placed in the RECORD.

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

ROXBURY COMMUNITY COLLEGE,
Roxbury Crossing, MA, June 15, 1993.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I have known Ms. Eleanor Acheson since November 1992 in my capacity as President of Roxbury Community College, the most diverse institution of higher education in New England. Ms. Acheson served as a member of the Roxbury Community College Board of Trustees from April 1987 to April 1993, receiving a plaque from the College community in appreciation for her sincere commitment and dedication to the mission and purpose of the College. The trustees, faculty, staff and students have also made me aware of Ms. Acheson's previous and continuing commitment to access and quality education for minorities and communities of color.

Sincerely yours,

DR. GRACE CAROLYN BROWN,
President.

HILL & BARLOW,
Boston, MA, June 18, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Senate Judiciary Committee, Washington, DC.

Re: Eleanor D. Acheson, Nominee for Assistant Attorney General for Policy Development

DEAR SENATOR BIDEN: I write to offer my support for confirmation of Eleanor Dean Acheson, nominee for the position of Assistant Attorney General for Policy Development. I know Eldie well as a prominent member of the Boston legal community who has made her time and her talent available to less fortunate and disenfranchised citizens.

As you may know, Ms. Acheson has been a long-time director of Roxbury Community College, which is not only the only junior college in the predominately black neighborhood of Roxbury, but which is itself a symbol of hope and upward mobility for African-Americans in this area. Ms. Acheson has also been involved since its inception with Women Incorporated, a drug treatment intervention program for women based in Roxbury. Through these and other initiatives in the community, Ms. Acheson has demonstrated her commitment to addressing in specific and constructive ways the suffering disproportionately borne by African-Americans in Boston. She has also dem-

onstrated a view of herself as truly a citizen of the whole community.

Thus, it was with some dismay that I learned of concerns about her membership in a private country club in Brookline, from which she resigned this spring. I am familiar with the club, have been a guest there on many occasions, and have even been invited three times to join. As a product of the south side of Chicago, I still find it difficult to imagine myself as a golfer, and so have chosen to decline. But if I am any indication, the club does not have a commitment to the exclusion of African Americans. Although membership certainly appears to have been rather narrow in the past, I understand that I am not alone among African-Americans in having been invited to join.

In light of her professional record, I hope that Ms. Acheson's one-time membership in this country club will not be disqualifying, and that you will join in supporting her confirmation.

Yours respectfully,

DEVAL L. PATRICK.

ROPES & GRAY,
Boston, MA, June 15, 1993.

Sen. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

Attn: Jeff Blattner.

Re: Eleanor D. Acheson.

DEAR SENATOR KENNEDY: I understand that, in connection with the confirmation of the nomination of my friend and colleague Eleanor Acheson for Assistant Attorney General, a question has arisen regarding her former membership at The Country Club in Brookline, Massachusetts. Specifically, I understand the issue to be whether The Country Club was, or created the appearance of being, exclusionary or inhospitable to minorities. I am an African American and long-time resident of Newton and Brookline. I am not aware of any exclusionary policy regarding membership or guest privileges at The Country Club. I have, on a number of occasions, attended Ropes & Gray office functions and other social gatherings at The Country Club. At no time have I experienced any hostility or felt the least bit uncomfortable in the Club surroundings. Quite the contrary, I have been made to feel most at ease and cordially received by members and non-members alike. I am also aware of several members of the minority community who have used the Club facilities as guests of members and who have reported that they experienced only friendship and hospitality in a congenial atmosphere.

I should also state that I have been a friend and colleague of Eldie Acheson since we started as associates at Ropes & Gray in 1974. I am almost embarrassed to have to say this, but I know no one who is as firmly and outspokenly committed to the principles of equal rights, diversity and non-discrimination as is Eldie Acheson. She has been an agent for positive change in every activity and organization of which she has been a part, including our firm, the Roxbury Community College and several professional bar organizations. I hope this information will be helpful in the confirmation process and trust that you will let me know if there is anything further I may do to assist.

Very truly yours,

ROSCOE TRIMMIER, Jr.

NWPC,
July 12, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chair, Senate Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: Eleanor Acheson is a highly qualified nominee to be Assistant At-

torney General for the Office of Policy Development. She should be confirmed promptly.

For any Senator to raise the issue of her associate membership in the Country Club in Brookline, MA is to apply a double standard. At least one earlier male nominee was confirmed by the Senate Judiciary Committee without any criticism of his full and continued membership in the very same club.

It is a particularly cynical maneuver to raise such an issue about Eldie because her life demonstrates a deep commitment to minority and women's rights. Her associate membership at Brookline in the late 1980's helped to open up the club to subsequent full membership for women. She supported efforts to increase the number of club members of color.

In 1990, Robert S. Mueller, III, was confirmed by the Committee to be Assistant Attorney General for the Criminal Division although he listed membership in the Brookline Club on his Judiciary Committee questionnaire without any challenge.

Knowing your own emphasis on fairness, I trust that you will not allow the Committee to be embarrassed by any unsubstantial and inequitable charges designed only to delay the confirmation of this excellent woman candidate.

Sincerely,

HARRIETT WOODS,
President.

Mr. SIMPSON. Mr. President, I rise in support of the nomination of Eleanor D. Acheson for Assistant Attorney General for Policy Development. I believe Mrs. Acheson's education, background, and legal experience qualify her for the position.

However, my purpose today is to address the issue of club membership which was raised by Senator PRESSLER. I commend my colleague from South Dakota for raising the issue of using a double standard as we consider nominations under the club membership rule we adopted in the Judiciary Committee 3 years ago. He has worked doggedly to bring this issue to the attention of the committee and the Senate, and I believe he has hit upon a real hypocrisy.

I do not believe that Eleanor Acheson belonged to a club which she knew to intentionally discriminate on account of race, color, religion, disability, or national origin. However, as Senator PRESSLER pointed out during the committee's consideration of the Acheson nomination, Mrs. Acheson's club situation in Massachusetts was remarkably similar to that of a Republican nominee which the committee refused to approve because of his club membership.

I believe it is important that all members of the committee do understand the standard to be applied to judicial nominees who have a club problem. We must have consistency and a single standard, no matter whether the nominee was appointed by a Republican President or a Democratic President.

I commend the Senator from South Dakota and the chairman of the Judiciary Committee for their colloquy which has clarified the standard which

the committee will apply to clubs which have the perception of discrimination, but which do not intentionally discriminate in their membership policy.

Mr. BIDEN. Thank you very much.

The PRESIDING OFFICER. The Chair will state the following. Pursuant to the following order, the motion to reconsider is laid upon the table and the President will be notified of the Senate's action.

Mr. BIDEN. I thank the Chair, and I thank my Republican colleague.

SUPREME COURT OF THE UNITED STATES

Mr. BIDEN. Mr. President, is it in order at this moment now to proceed to the nomination for discussion of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senate majority leader has that authority.

Mr. BIDEN. Mr. President, I have been designated by the majority leader to do that, and I now ask unanimous consent to proceed to the consideration of the nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice.

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

The nomination will be stated.

The legislative clerk read the nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice.

Mr. BIDEN. Thank you, Mr. President.

Mr. President, there are several Senators who would like to speak on this nomination. This is one of the real joys of my tenure as chairperson of the Judiciary Committee to have a nominee of such high quality and distinction and one that has received such broad and overwhelming support not only in the Senate but from every quarter of the legal and academic community as well as the citizens at large.

On March 19, 1993, when Justice Byron White announced that he would retire from the U.S. Supreme Court at the end of this term in June, there was a good deal of speculation of what would occur. Into what had already become the supercharged atmosphere of Supreme Court nominations, President Clinton stepped forward as the first Democratic President in 26 years to have an opportunity to name an Associate Justice, or any Justice, including Chief Justice, to the Supreme Court.

But the anticipated storm that the political pundits and, I must admit, the Senator from Delaware, chairman of the committee, and others had suggested might occur never arrived, to our great satisfaction and, I think, to the benefit of the country.

On June 14, 1993, President Clinton nominated Ruth Bader Ginsburg to be the 107th Justice of the U.S. Supreme Court and, as I indicated, to the wide

acclaim of everyone who was in earshot.

In record time, the Judiciary Committee—and I might add in no small part due to the help, cooperation, and honorable way in which the ranking minority member of the committee, the distinguished Senator from Utah, Senator HATCH proceeded—in record time the Judiciary Committee reviewed the nominee's written record—she had over 300 published opinions that she had written and had completed the hearings—and unanimously voted to recommend the confirmation at the end of the hearings. All 18 members of the Senate Judiciary Committee—and I know I need not tell the Presiding Officer that every political spectrum represented in the Senate as a whole is represented on that committee, nonetheless, 18 to 0 we voted to recommend the confirmation of Ruth Bader Ginsburg to the full Senate. The confirmation process from start to finish was less contentious than any in recent history, and the reasons for that, I believe, are fairly simple.

First of all, the process worked because President Clinton respected the constitutional role of the U.S. Senate. He sought the Senate's advice and consent to nominees of the Court; he consulted with the leadership of both parties, and he listened to the advice he received by moderating his choice of a nominee.

That is how it is supposed to work Mr. President, and has not in a while.

Second, the process worked because of the nominee herself. In Ruth Bader Ginsburg we have a nominee whose qualifications and judicial temperament are indisputable. They are evident from her extensive record as a scholar, a Supreme Court advocate, and a Federal appellate judge; Judge Ginsburg is anything but a stealth candidate—widely written, widely discussed, widely known, widely before the Supreme Court as advocate, and also has published many written opinions.

Most important, Judge Ginsburg's judicial record and style mark her as a true consensus candidate. Judge Ginsburg is a nominee who holds a rich vision of what our Constitution's promises of liberty and equality mean, balanced by a measured approach to the job of judging.

This balance is what earned Judge Ginsburg the unanimous support of the Judiciary Committee—and it is what has earned her my support.

As with past Supreme Court nominees, the key inquiry I undertook with respect to Judge Ginsburg was to gain a sense of her judicial philosophy and, in particular, of her approach to interpreting the Constitution, of her understanding of that document and its meaning in the year 1993.

Judge Ginsburg accepts the Constitution as an evolving charter of govern-

ment and liberty—as a limited grant of power from the people to the government—not a narrow list of enumerated rights.

At the same time, she speaks and practices judicial restraint, understanding that a judge must work within our constitutional system, respecting history, precedent, and the respective roles of the other two branches of Government, the executive and legislative branches.

On the first point, Judge Ginsburg has stated unequivocally that she believes our Constitution is a living document that adjusts as society changes, thereby retaining its vitality for over 200 years.

In a 1988 speech, she said:

We still have, cherish, and live under our eighteenth century constitution because, through a combination of three factors or forces—change in society's practices, constitutional amendment, and judicial interpretation—a broadened system of participatory democracy has evolved, one in which we take just pride.

In testimony before the committee, Judge Ginsburg spoke directly to whether the Constitution protects individual rights and liberties beyond those that are expressly mentioned in that document, and as most Americans know much cherished and protected liberties are not mentioned in that document, such as the right to marry, a whole range of rights we take for granted and are constitutionally protected.

And in clear and unequivocal terms, she expressed support for the concept of unenumerated rights, that is constitutionally protected individual rights that are not specifically listed in the Constitution, such as the right to marry;

Her testimony left no doubt that she supports the Supreme Court's recognition of a broad, unenumerated right to privacy, one that protects such personal decisions as whom to marry, where to live, whether and how to raise one's children.

Judge Ginsburg stated that:

There is a constitutional right to privacy which consists *** of at least two distinguishable parts.

One is the privacy expressed most vividly in the fourth amendment—that is the Government shall not break into my home or office without a warrant, *** the Government shall leave me alone.

The other is the notion of personal autonomy; the Government shall not make my decisions for me—I shall make, as an individual, uninhibited, uncontrolled by my Government, the decisions that affect my life's course.

To determine whether an asserted unenumerated right is recognized as being within the broad concept of liberty contained in the 14th amendment's due-process clause, Judge Ginsburg cited the approach articulated by Justice Harlan in *Poe versus Ullman*, as illustrating her methodology.

Justice Harlan's opinion is an eloquent statement of a flexible conception of due process and of liberty, not limited by the specific rights named in the Constitution. In choosing this model, Judge Ginsburg selected a method for identifying unenumerated rights in keeping with the Constitution's majestic and capacious language.

Justice Harlan's approach is also one of measured change and rooted evolution—and in this respect as well he appears to be Judge Ginsburg's model.

Judge Ginsburg's written record and her testimony both attest to her belief that a judge best seeks proper interpretations by being cautious and restrained.

And if anyone communicated caution and restraint in the going on 21 years I have been here, it was Ruth Bader Ginsburg.

A careful adherent to a case-by-case method of slow evolution in the law, she believes courts should move in measured motions.

Judge Ginsburg articulated her view of how judges should go about interpreting our evolving Constitution in her recent Madison lecture, sounding one overarching theme: The Court should generally lay markers along the road to doctrinal change, rather than making abrupt changes that lack secure foundations.

Her style is always cautious and restrained, not ideological and not result-oriented. She is, as she described herself at the hearings, neither conservative nor liberal in her approach to judging.

The balance that Ruth Bader Ginsburg achieves—between her vision of what our society can and should become, and the limits on a judge's ability to hurry that evolution along—will serve her well and will serve us well during her tenure on the Supreme Court.

Based on my review of Judge Ginsburg's entire record—as an advocate, as an appellate judge, and as a nominee to the Supreme Court—I will, as is no surprise, vote to support and vote to have put on the Court, Judge Ruth Bader Ginsburg.

I urge each of my colleagues to do the same when the Senate votes tomorrow on the confirmation of Ruth Bader Ginsburg to be an Associate Justice of the U.S. Supreme Court.

And my wish and hope, Mr. President, as I close, is that if President Clinton has an opportunity and an obligation to nominate anyone else to the Court during his tenure, that he is as wise and as insightful as he has been in choosing Ruth Bader Ginsburg.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened to the comments of my distinguished colleague from Delaware. I appreciate

serving with him on the Judiciary Committee. He has done a very good job as chairman and he has been very fair and decent to our side. I want him to personally know that I think he did a good job of handling this first nominee in this Congress, Ruth Bader Ginsburg.

Mr. President, I will vote for the confirmation of Judge Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the United States. Let me briefly outline the reasons why.

President Clinton and I are unlikely ever to agree on the ideal nominee to be a Supreme Court Justice. Indeed, there have been many prominently mentioned potential nominees whom I would in all likelihood vigorously oppose. But I do believe that a President is entitled to some deference in the selection of a Supreme Court Justice. If a nominee is experienced in the law, highly intelligent, of good character and temperament, and—most important—gives clear and convincing evidence that he or she understands and respects the proper role of the judiciary in our system of government, the mere fact that I might have selected a different nominee will not lead me to oppose the President's nominee.

In the case of Judge Ginsburg, her long and distinguished record as a judge on the U.S. Court of Appeals for the District of Columbia circuit is the critical factor that leads me to support her. Her judicial record demonstrates that she is willing and able to issue rulings called for by the Constitution and the Federal statutes, even though Judge Ginsburg, were she a legislator, might personally have preferred different results as a matter of policy. Several examples may illustrate this point:

In *Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990), Judge Ginsburg wrote an opinion holding that because Congress did not intend to give a cause of action to civil rights groups or anyone else to sue Federal officials to force them to enforce civil rights laws as those groups would have them enforced, the courts had no authority to create such a cause of action for these civil rights groups. Judge Ginsburg declined an opportunity to legislate from the bench, even though from her background as a women's rights lawyer she might have been thought to be sympathetic to the plaintiffs.

In *Coker v. Sullivan*, 902 F.2d 84 (D.C. Cir. 1990), Judge Ginsburg wrote an opinion holding that because Congress did not provide any such cause of action, homeless persons and advocacy groups could not sue to force the Department of Health and Human Services to monitor and enforce State compliance with Federal emergency assistance guidelines. Quite obviously, homeless persons and their advocacy groups are sympathetic.

In *Randall v. Meese*, 854 F.2d 472 (D.C. Cir. 1988), Judge Ginsburg wrote an opinion that was joined by Judge Silberman, a Reagan appointee, and from which Judge Mikva, a Carter appointee, dissented. In that opinion, she ruled that an alien who was present in this country on a visitor's visa, and who was denied adjustment of status to permanent resident alien, had to first exhaust her administrative remedies provided for by law before seeking judicial recourse. This is an elementary principle of administrative law that, when properly adhered to as Judge Ginsburg did in this case, reduces litigation and permits adjudication, if it must finally occur, to be based on a fully developed record.

In *Dronenburg v. Zech*, 746 F.2d 1579 (D.C. Cir. 1984), Judge Ginsburg, alone of the Carter appointees on the D.C. circuit, agreed with Judges Robert Bork and Antonin Scalia that a homosexual sailor's constitutional challenge to the military's homosexual-exclusion policy was precluded by a controlling Supreme Court decision that had summarily affirmed a district court decision upholding a Virginia statute criminalizing homosexual conduct. Her liberal colleagues on the Court wanted to extend the right of privacy announced in other cases to this situation, but she properly, in my view, concluded that the Supreme Court's summary affirmation was controlling, and whatever her own views on the right to privacy, there was no latitude to apply it there. That was the correct decision, regardless of where you are on gay rights.

In *Conair Corp. v. NLRB*, 721 F.2d 1355 (D.C. Cir. 1983), in a significant loss for labor unions, Judge Ginsburg wrote an opinion that was joined by then-Judge Scalia over the dissent of Judge Wald. There, it had been found that an employer had engaged in outrageous and pervasive unfair labor practices in connection with an election to determine whether a union should represent the employees. The union, however, had not shown that it ever had majority support among the employees. Judge Ginsburg ruled that the NLRB therefore could not impose a bargaining order to order on the employer. She reasoned that to do so in the absence of an expression of majority sentiment would violate the National Labor Relations Act principles of freedom of choice and majority rule. In reaching this result, she disagreed with Warren court dictum.

Judge Ginsburg has been anything but a lockstep liberal. As one article noted,

According to a computerized study of the appeals court's 1987 voting patterns published in *Legal Times*, Judge Ginsburg voted more consistently with her Republican-appointed colleagues than with her fellow Democratic-appointed colleagues. For example, in 1987 case that produced a division on the court, she voted with Judge Bork 85 percent of the time and with Judge Patricia M. Wald 38 percent of the time.

That is found in the New York Times, on June 27, 1993, at page 20.

Similarly, according to a study by Judge Harry Edwards of the D.C. circuit, in the 1983-84 year. Judge Ginsburg voted with Judge Bork 100 percent of the time, and with then-Judge Scalia 95 percent of the time. Edwards, "Public Misperceptions Concerning The Politics of Judging," 56 *Colo. L. Rev.* 619, 644 (1985). The high regard in which Judge Ginsburg is held by her conservative judicial colleagues provides further assurance that she is unlikely to be a liberal judicial activist.

I also take comfort from some of Judge Ginsburg's testimony before the committee. As she explained, "No judge is appointed to apply his or her personal values." Instead,

[T]he spirit of liberty must lie in the hearts of the women and men of this country. It would be really easy, wouldn't it, to appoint platonic guardians who would rule wisely for all of us, but then we wouldn't have a democracy, would we? * * * Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians.

Likewise, in testimony that has not received the attention that it deserves, Judge Ginsburg exploded the judicial activist notion that the ninth amendment is somehow a font of unenumerated rights for judges to elaborate. In her words, the ninth amendment is "peculiarly directed to Congress to guard" and is an "instruction first and foremost to Congress itself," not to the courts.

Let me add that there were other aspects of Judge Ginsburg's testimony that I found disturbing. For example, her view that a right to abortion could be based on the equal protection clause is, I believe, ultimately untenable. I am also concerned that some of her jurisprudential musings give insufficient attention to the legitimacy or illegitimacy of certain courses of judicial action.

In addition, I disagree very much with some of Judge Ginsburg's academic and advocacy writings. I believe, however, that Judge Ginsburg recognizes the distinction between her role as an academic and advocate and her role as a judge.

I do not expect to agree with any nominee, especially one chosen by a President of the other party, on every issue that may come before the judicial branch. Because I am opposed to the politicization of the judiciary, I believe that it is improper to apply any single-issue litmus test to Supreme Court nominees. A cumulation of unsound positions by contrast, might warrant the conclusion that a nominee does not understand and respect the proper role of the Supreme Court and is therefore unsuited to serve on that institution, irrespective of his or her other qualifications. Here, Judge Ginsburg's long

record of, on balance, restrained and responsible judging is sufficient to outweigh the genuine concerns that have arisen. I will therefore vote to confirm her nomination.

I might also add that I personally like this judge. I think she is a very fine person. I know she has a great judicial temperament. She is a fine scholar on the law. She is ethical, and I think is a person who will do a good job on the Supreme Court.

I wish we agreed more, but that is not my province. It is the province of the President of the United States. I believe he has made an eminently wise and good choice here that in the coming years will, hopefully, prove to be a judge who will not be a judicial activist on the bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, there are several other Senators who have indicated a desire to speak on this nomination and we are checking right now in the cloakroom to see if they are available to come over.

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

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

Mr. GRASSLEY. Mr. President, on the Ginsburg nomination, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the hearings on Judge Ginsburg's nomination demonstrated once again that the confirmation process has been unduly politicized. The critics on both the right and left have bemoaned Judge Ginsburg's reticence regarding how she would approach specific areas of the law. I retain my conviction that the advise and consent responsibilities of the U.S. Senate should not involve rating the nominee on a checklist of discrete political issues.

In addition to the obvious criteria that any nominee for the Supreme Court ought to have—I suppose any nominee for any position on the judiciary ought to have—those of intellect, of integrity, and of judicial temperament, it is very appropriate for the Senate to inquire into a nominee's judicial philosophy.

Of course that includes the nominee's fidelity to the Constitution. It involves that nominee's understanding of the limited role of the courts, and it involves what I hope is a commitment to judicial restraint. On that latter point some of my colleagues would obviously disagree on what that might be, judi-

cial restraint. For me, it is being very cautious to make sure you only interpret the law and do not make the law, and that you interpret the Constitution within its original intent.

But this need not include a detailed discussion of the precise reasoning a judge would use in every hypothetical that any individual Senator might propose to a nominee, particularly for the Supreme Court. While Judge Ginsburg rightly declined to answer questions about specific cases, she gave us a thorough understanding of her judicial philosophy. Judge Ginsburg showed us that, while she is a political liberal, she is a judicial moderate.

Judge Ginsburg has the requisite intellect, integrity, and temperament. I have reservations about her judicial philosophy because her record and her testimony indicated a willingness to legislate from the bench on occasion. But let me emphasize: On occasion. Fortunately, this activism is an exception, an exception to her usual moderation. And, on balance, I conclude that Judge Ginsburg should be confirmed by this body.

During the hearing many members of the Judiciary Committee urged the judge to lead society. I will not give any names. It is all on the record. Perhaps some of my more liberal friends in this body believe that a Supreme Court nominee ought to be out in front, in their words, "leading us in a certain direction." I do not happen to agree with that. This is where Judge Ginsburg satisfies those who may have doubts about anyone a Democratic President suggests for the Supreme Court.

She insisted both to conservative members of the Judiciary Committee, as well as more liberal members of the Judiciary Committee, that her job is to follow the dictates of the law. Judge Ginsburg recognized the job of a judge is not pleasing the home crowd or following opinion polls, but instead a very faithful application of the Constitution and of the law, as she explained, and this is a quote that will probably be used many times on this floor as it relates to Judge Ginsburg, but I want to quote what she said:

The Constitution did not create a tricameral system. Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians.

Judge Ginsburg then rightly declines the invitation to activism. She rejects the suggestion of some that the general public is incapable of wisely ruling itself without the guidance of a judicial elite that thinks it knows what is good, or maybe what is the very best, for our society.

Adherence to judicial restraint is apparent in Judge Ginsburg's opinions, especially those involving statutory construction. As a general rule, Judge

Ginsburg finds herself limited by the terms of the statute as illuminated by legislative history. She resists the temptation to rewrite statutes, but from time to time, she has seen the role for the Supreme Court in interstitial legislating and, as you lawyers know better than me, the opportunity then to rewrite laws on occasion instead of striking them down and allowing Congress to do the rewriting.

Judge Ginsburg usually exhibits restraint in constitutional matters. She does endorse the Constitution's protection of so-called unenumerated rights, but she recognizes that those rights are very limited and that defining economic and social rights are the job of the legislature.

Judge Ginsburg's record does show an occasional lack of judicial restraint. I suppose most of the time a nominee will be satisfactory to most people—right or left—but there will be some occasions, when they do not quite come up to the personal standards that we would set if we were selecting somebody. So we can all say that there are some differences, and I suppose there is an occasional lack of judicial restraint that gives me some fear that maybe I am feeling too good about this nomination. But then there are Presidents as well—you know, even a President Reagan or a President Bush who nominates somebody to the Supreme Court, I bet those ex-Presidents look back upon those appointments and say, "Well, this person did not do in this particular case exactly what I would have wanted my nominee to do."

But then, you see, we put people on the Supreme Court not running for that office or being elected to it, but selecting them for a place where there is a great deal of protection: They have lifetime appointments and their salaries cannot be reduced while they are in office. These constitutional protections ensure that these people sitting across the street as Supreme Court Justices can make those decisions, not influenced by the political winds that a transient majority might be foisting upon us from day to day. Their job is to look for the long term and to protect our Constitution, protect our processes of decisionmaking.

So, maybe she does not always—as I would want her to do—show judicial restraint.

It seems to me that in one area, the area of granting standing, she often goes out of her way to give people standing where she finds the case compelling. I spoke about this in the Judiciary Committee. I even asked her about this. In *NRC versus Dellums*, she found a plaintiff within the zone of interests protected in the South African sanctions law, based upon the law's statement of what Congress predicted ought to happen. It was a set of predictions that Congress put in the law that was a reason for Congress passing that law.

I take the view that in that particular case, it is not very wise for even us—we hope certain end results come from statutes we pass, but as a practical matter, judges cannot put much basis in what we predict might happen. We have to put it into the language of the statute. So she allowed standing in that particular case.

In another case, it seems to me that she exaggerated constitutional protection, in the *DKT* case where she argued that the United States cannot constitutionally refuse to fund foreign abortion-related family planning.

Fortunately, though, her activist cases are aberrations in her record of judicial moderation. Only time will tell whether Judge Ginsburg's cautious approach will persist. But even her obvious personal integrity—and given this, because she does have personal integrity—I am hopeful she will resist the temptation to lead society as some sort of judicial philosopher queen.

There is one other thing I want to add and this is probably because at the grassroots, there might be public concern about this nomination that is beginning to pop up, probably from some conservative newsletters that are going out to membership raising some concerns about Judge Ginsburg, without anything very specific in them. I do not know that for a fact. I have not seen those newsletters. But somewhere out at the grassroots, as I go home almost every weekend to keep in touch with grassroots opinion, I am sensing that there is some growing concern about Judge Ginsburg.

Obviously, we are going to confirm this nomination tomorrow. So if there is some concern growing out there, I do not think it is going to be adequately felt within the Congress, and we should not hold up this nomination.

All I can say is that I have a great deal of respect for a lot of conservative groups in this country who are concerned about who is going to be on the Supreme Court. Maybe 5, 10 years from now, I will look back at my speech on Judge Ginsburg and wonder why there was not more concern in my mind. I do not happen to think today I have to worry about that. But as I indicated, there are some Presidents who have appointed people to the Supreme Court who years later wondered why they appointed them or they were not being the Justices they anticipated they would be. In any way, maybe I will look back and see that.

Today, I see there is some concern out there. As kind of a point of political education of my constituents—not just in Iowa but all over the country, because I am saddened to say I do not think we educate our people enough about the processes of Government, and there is a lot of lack of credibility in politicians, a lack of credibility in Congress and our whole decisionmaking process of all three branches of

Government because we do not do a good enough job of teaching it—I will simply say this: That for conservatives who want a so-called conservative on the Supreme Court and probably would expect conservatives in Congress to vote against Judge Ginsburg because maybe she does not fit some litmus test that we have out there—first of all, we have chided liberals in this body because they have tried to foist upon nominees litmus tests from the Reagan and Bush era, and we felt that was wrong.

So if it is wrong for Democrats to put a litmus test on a Republican nominee to the Supreme Court, then it seems to me it has to be wrong for us as Republicans when we have a Democrat President to put some sort of litmus test upon Democratic nominees to the Supreme Court.

The other thing is that we conservatives lost the election and, for the next 4 years, the right to nominate people to the Supreme Court. It does not mean we in this body dig a hole for ourselves and pull it in after us and forget our advise and consent responsibilities. We have that. But it seems to me we as Senators have to look at advise and consent, when we have a Democrat nominee for the Supreme Court, just as we expect Democrats in this body to do when we have a Republican selecting somebody to the Supreme Court.

So that is the second point I would make to my friends at the grassroots who maybe have a growing concern about Judge Ginsburg.

And then lastly, I would point out that she and other people appointed to the Supreme Court are going to be there for a long time. That is the way our system was set up—and we wish them a long, positive life on the Supreme Court—to be a check on our legislative process, the extremes that go on in the congressional branch of Government and in the executive branch of Government. And that whatever might be the political issues of this day, even abortion, for instance, people out there at the grassroots who are conservatives might be concerned about Judge Ginsburg, that she has views we questioned her about or even things we did not question her about. They have concerns about those issues today because those are issues in 1993. But in the year 2003 or 2013 they probably will not be issues for the most part. Judge Ginsburg is going to be adjudicating a lot of questions and interpreting a lot of law, and even our Constitution, in the years in the future that we may not be thinking of today.

So we have to judge what her instinct is—if her instinct is to be very cautious, if her instinct is to interpret law rather than make law and, as she indicated, look for legislative history on laws being made to try to find out congressional intent.

It seems to me that is about all we can hope for in the way of a Supreme Court Justice, if they are otherwise very qualified for the job, if they are people of high integrity and they have judicial temperament.

Every time I vote for a Supreme Court Justice, I might have some concern about all of these things, and I have found some Republicans I have voted for who have not always ruled the way I would like to have them rule on a particular case. But in our system of Government, whatever independence they have, I think has proven the necessity for us supporting and applauding that independence and doing what we can to maintain it even if it does not always work to exactly our approach to Government.

So I support Judge Ginsburg, and I ask people who may have some doubts about her to think in terms of the future, not just the present.

I yield the floor.

Mr. BIDEN. Mr. President, before the Senator from South Dakota speaks—and I will only take a second—I too stand to pay a compliment to my friend from Iowa, a fellow member of the Judiciary Committee, because he has been a man of his word.

I was just saying to my staff I am not at all certain, were the tables turned, there might not be some who would forget their earlier statements about being consistent and conclude it was in their interest not to be consistent because the particular nominee did not meet all of their requirements on the hard right or hard left agenda. But the Senator from Iowa has indicated—and I have no illusions there may be another nominee, where he has a very different view—that he has no illusions about where this nominee is, at least on one important issue, on the conservative agenda. Nonetheless, he has been consistent with his philosophy, which is that the President gets to choose and there should be no litmus test and on balance you have to make a judgment whether or not the nominee is good or bad.

He has been saying that for 12 years. Obviously, in the last 12 years it has been easier for him to say with a Republican President. It is not as easy for him to say and do this time, with a Democrat, and I wish to recognize that he has been consistent. I admire him for it and I thank him for it.

Mr. GRASSLEY. Madam President, if the Senator will yield, I just simply say I thank the Senator very much. I hope I am as consistent as he said. It is my intention to be that consistent.

I thank the Senator. I yield the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from South Dakota.

Mr. PRESSLER. Madam President, I rise in support of the nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the

United States. I believe in the time I have served in the Senate we have confirmed five Supreme Court nominees. I believe the President of the United States basically should get his or her nominee, barring some major ethical problem or competence problem. I feel that Mrs. Ginsburg has been an outstanding judge. I think she will be an outstanding Justice of the Supreme Court.

I did say in the committee that I was disappointed we did not have more answers to some of the Indian Country questions I asked.

The nationwide Indian newspaper, Indian Country Today, ran an account of my questions regarding Indian country legal issues. These legal issues vary from questions of gaming to land claims to hunting and fishing rights, asked from both Native Americans' point of view and non-Native Americans' point of view.

Much of the Indian Country law that has come about in the last 20 years has been made in the courts because of either Congressional unwillingness to act or the feeling on the part of the courts for the need to act. For example, the reservation land, fee patent issue—Congress decided that about 100 years ago. Ever since then the courts have been deciding issues relating to this Nation. But they have been doing it in a piecemeal fashion, with district judges in different parts of the country arriving at different decisions.

I did meet with Mrs. Ginsburg early on and told her what questions I would be asking. I also sent her copies of the questions. But as a Senator, I was disappointed she did not answer them, or at least did not answer them very fully. This would not cause me to vote against her because, indeed, Supreme Court nominees do not have to answer all questions asked of them by Senators.

We tried to frame the questions in such a way that they would not address a particular pending case. Both Indians and non-Indians were looking for answers, or some indication from her long career as a teacher and as a jurist, to get some feel for her sensitivity to this large body of law.

I also asked her some questions about the Court's decision in *U.S. versus the Sioux Nation of Indians* which involved land claims, for which compensation was given.

I must say that I have put a lot of work into these issues in my time in the House and the Senate. I devote one staff member's time to Indian country issues. They are becoming greater with Indian gaming in many States, not just the States west of the Mississippi.

When the attorneys general meet, those west of the Mississippi, Indian country issues are key issues; they also are key issues in States east of the Mississippi. I read in the papers of land claims in Connecticut, of Indian gam-

ing issues in Florida, New York, and other States.

Madam President, I ask unanimous consent to have printed at this point in the RECORD the account of my questioning of Ms. Ginsburg on Indian matters that appeared in Indian Country Today.

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

[From Indian Country Today, July 28, 1993]

HIGH COURT NOMINEE ASKED TO ADDRESS SOVEREIGNTY ISSUES
(By Bunty Anquoe)

WASHINGTON.—Judge Ruth Bader Ginsburg, President Clinton's nominee to the Supreme Court, discussed a wide array of legal and political issues last week in her testimony before the Senate Judiciary Committee—including tribal sovereignty and treaty rights. In a lengthy exchange with Sen. Larry Pressler, R-S.D., Judge Ginsburg demonstrated an understanding of the legal underpinnings of tribal sovereignty and the federal-Indian trust relationship.

As is the standard practice with nominees, she said she could not give her views on specific issues, such as Indian gaming and the Sioux Nation's Black Hills land claim, because they are questions that may come before the court in the future. Other topics, such as Bill of Rights enforcement on Indian lands and tribal civil jurisdiction over non-Indians, she said, are issues under the within of Congress.

"It would be wrong for me to say or preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide," she said. "A judge sworn to impartiality can offer no forecast, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."

Judge Ginsburg frequently underscored the legal relationship between Congress and Indian tribal governments that is rooted in the Constitution and grounded in federal law, treaties and court decisions over the past 200 years.

The Supreme Court, over the last 15 years, has become increasingly conservative and has handed down opinions adverse to tribal sovereignty, say tribal leaders.

Sen. Pressler asked the nominee whether she has an "expansive or restrictive" view of tribal sovereignty.

"I take whatever view Congress has instructed," Judge Ginsburg replied. "Senator, the Congress has full power over Indian affairs under the Constitution and the Supreme Court has so confirmed most recently in *Morton vs. Mancari* *** so judges are bound to accord the tribes whatever sovereignty Congress has given them or left them. As a judge, I would be bound to apply whatever policy Congress has set in this very difficult area. But the control is in the hands of Congress and the courts are obliged to faithfully execute such laws as Congress has chosen to enact."

The 1974 Supreme Court decision in *Morton vs. Mancari* upheld the federal Indian hiring preference because, like special health and education benefits derived from the tribal trust relationship, the preference is not based on race. Instead, the court said, the hiring preference is based on a government-to-government relationship between the United States and tribes.

Judge Ginsburg told the 18-member judiciary committee that only Congress can nullify treaties with Indian tribes. If it has not

done so, "the treaties would be binding on the executive." She also applied this principle to the federal-Indian trust relationship.

"I think that ever since the (1832) Cherokee Nation case, it has been the precedent of the Court that when Congress says in a treaty, makes it evident in a treaty or a statute that Congress has accepted, assumed a trust relationship with a recognized tribe, that the court would then apply that policy."

ON JURISDICTION

Senator Pressler told the nominee that law enforcement and jurisdictional disputes between tribal and state authorities are particular problems in South Dakota where much Indian land is "checkerboarded" with non-Indian land.

He pressed the nominee on issues focusing on state and non-Indian rights on Indian land and often phrased his questions from the perspective of non-Indian interests.

After the confirmation hearing, which concluded late last Thursday, Sen. Pressler denied that his questions favored any particular point of views. He told *Indian Country Today* that he was disappointed Judge Ginsburg didn't respond more to his questions.

"I wasn't trying to ask for one side or the other," he said in a telephone interview. "I would have liked to ask a broader range of questions because these are important issues of concern. I also talked to (Sen. Ben Nighthorse Campbell) about what kinds of questions I should ask."

The senator said his staff compiled his list of questions.

He specifically asked the nominee for her views on state law enforcement on tribal lands in light of the high court's 1990 *Duro vs. Reina* decision, which created a jurisdictional void by denying tribal authority over non-member Indians on reservation lands.

The senator queried, "Can you envisage a way state authorities might be able to exercise jurisdiction in Indian country in those instances where law enforcement voids appear to exist?" The nominee said Congress, not the courts, could decide that question and said the 1990 court "got it wrong" in its ruling in light of subsequent congressional restoration of tribal authority over all Indians on its lands.

"Congress can certainly give the states such authority," she said. "I think the example that you gave, the *Duro vs. Reina* case, is a case where the courts, in Congress' judgement, got it wrong and Congress corrected that."

Sen. Pressler resurrected the heated issue of whether federal courts should have limited review of tribal court decisions. Several members of Congress are seeking to push such review on tribal governments. Sen. Slade Gorton, R-Wash., attached an amendment to a recent bill designed to strengthen tribal courts. The amendment would study federal court review of tribal court decisions with respect to the 1968 Civil Rights Act.

Judge Ginsburg said Congress, in its plenary authority, can authorize such review, but added "Whether Congress should do that is a question that the Constitution plainly commits to the first branch and not to the third branch of government."

She parried another question from Sen. Pressler focusing on whether tribal governments can impose civil jurisdiction on non-Indians who live on non-trust land within reservation boundaries.

"Again, this seems to be peculiarly a policy question that is committed to the judgment of Congress and it is the function of the judges to apply whatever solution the legislature chooses to enact," she said. Re-

cent Supreme Court decisions have taken a different approach and actively limited tribal authority over non-Indians within a reservation.

The high court's 1978 decision in *Oliphant vs. Suquamish Indian Tribe* held that tribes cannot exercise criminal jurisdiction over non-Indians. The court's 1981 decision in *Montana vs. United States* found that the Crow Tribe cannot regulate hunting and fishing by non-Indians within reservation boundaries, and may exercise general civil jurisdiction over non-Indians only if an important tribal interest is at stake or if the non-Indians enter into consensual or commercial relations with the tribe or its members.

The Supreme Court most recently ruled tribes do not have the authority to regulate non-Indian hunting and fishing on federally owned fee land within reservation boundaries. Sen. Pressler wanted to know what impact the 1993 case, *South Dakota vs. Bourland*, would have in future tribal jurisdiction cases.

Judge Ginsburg answered, "That is a precedent that may require interpretation in cases that may come up, so I feel that it would not be proper for me to comment on how that precedent will be interpreted in the next case when the next case may be before a court on which I serve."

If confirmed by the Senate, the 60-year-old jurist would become the nation's 107th justice and the second woman on the high court. She would join Justice Sandra Day O'Connor, who was named to the court by President Ronald Reagan in 1981. Judge Ginsburg would also be the first justice in 26 years nominated by a Democratic president.

Sen. Carol Moseley-Braun, D-Ill., noted strong civil rights stances the Supreme Court took under Chief Justice Earl Warren in the 1960s. Sen. Moseley called Judge Ginsburg "a brilliant jurist and legal scholar, adding that she hoped the nominee would assume the mantle of retired Justice William Brennan and the late Justice Thurgood Marshall to "give voice within the court to the aspirations and hopes of the forgotten members of our society."

The Senate Judiciary Committee is expected to vote on her nomination Thursday with a full vote of the Senate following soon after.

Mr. PRESSLER. I also ask unanimous consent to have printed in the RECORD my minority view published in the report of the Committee of the Judiciary on the nomination of Ruth Bader Ginsburg. It summarizes my concerns with some of the questions I asked her on this subject and her answers.

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

STATEMENT OF SENATOR LARRY PRESSLER REGARDING THE CONFIRMATION OF JUDGE RUTH BADER GINSBURG TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT—MINORITY VIEW; REPORT OF THE COMMITTEE ON THE JUDICIARY

This was the first confirmation hearing of a Supreme Court nominee in which I participated. Because of this fact, I have considered carefully my vote on Judge Ginsburg's confirmation. Our vote today is a recommendation to the rest of our colleagues in the Senate whether or not they should confirm Judge Ginsburg. Prior to joining the Committee, I always placed great weight on the Committee's recommendations. I believe other Senators do also.

On one basic point, there is no argument: Judge Ginsburg is exceptionally well-qualified to be an Associate Justice of the U.S. Supreme Court. Her background is impressive. She has authored volumes of law review articles published throughout the world and in several languages. She was one of the first twenty female law professors in this country. She won five of the six cases she personally argued before the Supreme Court, including several landmark cases. For the past thirteen years, she has served with distinction as a federal appellate court judge on the D.C. Circuit. Her legal career clearly deserves our admiration and respect.

However, having said all this, I must express my disappointment with the nominee's responses to my questions during the hearings. Almost exclusively, I used my questioning periods to explore her understanding of Indian Country issues, which routinely come before the Court. My purpose in doing so was not to elicit a promise or commitment from her, or even an idea of how she would decide these issues so crucial to people in my part of the country. Rather, I had hoped to be satisfied that Judge Ginsburg had a good understanding and solid grasp of this complex and murky area of the law. Unfortunately, I was not satisfied.

While not as glamorous as other issues, Indian cases do frequently come before the Court. In the last decade, the Court has accepted approximately forty cases dealing the sovereignty, civil rights, law enforcement, or jurisdiction of American Indians and their tribes. I understand such cases never come before the D.C. Circuit Court of Appeals. Therefore, I did not expect Judge Ginsburg to be an expert on Indian law prior to her nomination. In an attempt to impress upon her the importance of these issues, I told Judge Ginsburg of my intent to inquire into her understanding of Indian Country law when she visited my office the day after her nomination. Additionally, I sent her references to several key Indian law cases a few weeks ago as well as a copy of the questions I intended to ask during the hearings.

Therefore, I was disappointed with Judge Ginsburg's answers to my questions. I felt they were largely non-responsive and somewhat simplistic. She failed to demonstrate a basic or general philosophy toward, or even an interest in, Indian Country issues. To her credit, she did promise to approach these cases in the same thorough, meticulous way she prepares for all cases. I commend her for that. But I disagree with her if she believes a Supreme Court Justice really does not need to possess knowledge of Indian Country issues and the problems of the West prior to taking the bench. It is exactly that lack of an overall philosophy that has led to the patchwork of court decisions which characterizes Indian law today.

As I have stated before, Congress certainly shares equally in the blame for this situation. All too often, this body has failed to act in a responsible and sensible manner regarding the concerns of citizens in Indian Country. But in the absence of congressional action or clear intent, the Supreme Court must make the law that Congress is unwilling or unable to make. Through its decisions, the Supreme Court has the responsibility of providing guidance for lower courts on Indian Country matters. It is therefore easy to see the importance of selecting nominees who have a basic understanding of the complex history of the American Indians and their unique relationship with the United States government.

Though I am not yet convinced that Judge Ginsburg has this understanding, I am voting

for her confirmation. But I also want to put future Supreme Court nominees on notice that I will insist they have an interest and understanding of Indian Country law. After today, I will not vote for a nominee unless I am satisfied that they have demonstrated this concern.

But I am not here to make threats. I do wish Judge Ginsburg all the best. I hope she has a long and productive career on the highest court in the land.

Mr. PRESSLER. Madam Chairman, I thank the Chair. I yield the floor.

Ms. MIKULSKI. Madam President, I rise today to support our newest Supreme Court nominee. There's no doubt in my mind, that Judge Ruth Bader Ginsburg will be an outstanding Supreme Court Justice. I have met with Judge Ginsburg and spoken with her at length.

Judge Ginsburg has had to overcome many barriers to get where she is now—the professional and personal barriers of a grudging establishment. Many would have crumbled against this sort of resistance. But, Judge Ginsburg has always been a person of grace and strength. Instead of crumbling, she has consistently fought to ensure that the fairness that was denied her be denied no other American.

Madam President, each time I am faced with the task of evaluating a Supreme Court nominee—and I have four times before in my Senate career—I apply the same criteria to all Supreme Court nominees.

First, is the nominee competent? Second, does the nominee possess the highest personal and professional integrity? Third, will the nominee protect and preserve the core constitutional values and guarantees that are central to our system of government, specifically freedom of speech and religion, equal protection of the law, and the right to privacy?

On every score, Madam President, Judge Ginsburg qualifies.

First, is Judge Ginsburg competent? Not only is she competent, but she's tough too. Judge Ginsburg has shown herself to have a first-rate mind and character. She's gotten numerous awards and honors to prove it, including a dozen honorary academic degrees from various universities and colleges.

Second, does Judge Ginsburg possess the highest personal and professional integrity? Like so many women of our generation, she had to fight to get ahead. And at that time, women had an especially hard time attending college, much less going to law school—and yet she did both.

Madam President, Judge Ginsburg didn't merely attend college and law school—an achievement in itself for a woman in the 1950's—she achieved great academic distinction while there, graduating Phi Beta Kappa from Cornell University in 1954 and top of her class at Columbia University Law School in 1959.

And in between these two dates, Judge Ginsburg got married, had a

child, and served as an editor for both the Harvard and Columbia law reviews.

Today, you would expect that any young lawyer with such a record would have a certain and secure future. But it was not so easy to Judge Ginsburg.

Unlike her male contemporaries at Harvard and Columbia, she was unable to find a law firm that would hire her—very few would even grant her an interview. As she put it:

To be a woman, a Jew, and mother to boot, that combination was a bit much.

The male-dominated legal establishment just wasn't ready for her. But eventually that hard work and determination got her the job.

Judge Ginsburg has helped to transform the rights of women. The day our President nominated her, she spoke of how things have changed for women and gave tribute to her late mother by saying:

I pray that I may be all that she would have been had she lived in an age when women could aspire and achieve—and daughters are cherished as much as sons.

Madam President, that's a powerful statement. It captures the spirit of Judge Ginsburg.

And finally, Madam President, I ask, will Judge Ginsburg protect and preserve the core constitutional values and guarantees that are central to our system of government? I have no doubt that she will.

Judge Ginsburg is a great supporter of fairness. As a lawyer, she worked hard through the equal protection cases that she argued before the Supreme Court to see that everyone, especially women, are judged by their competence and character.

As a lawyer, she argued several landmark cases before the Supreme Court in which the equal protection of men and women under the law was at stake. She has written decisions on topics from the freedom of religion and the right to privacy to the freedom of speech.

Judge Ginsburg has shown herself as one of the foremost defenders of the twin ideals which lies at the heart of our Nation and our Constitution—fairness and equality.

Her passion for fairness has marked her years on the D.C. Circuit Court. On the bench, she has earned the esteem of her colleagues from across the spectrum of the legal profession for her fairness and competence.

Her writings on the freedom of speech and the right to privacy, give me confidence that she will be a staunch defender of those rights, the rights that all Americans hold dear.

Madam President, in this country we, the people, are dependent upon the Constitution and its interpretation to protect our most basic rights. In that context, the Supreme Court is the final arbiter on decisions that are grave and complicated.

That is why we in the Senate have a great and indeed tremendous respon-

sibility. And that is why I hold all nominees to the same criteria without exception and without bias. They are the standards against which I measured—Justice Kennedy, Judge Bork, Justice Souter, and Justice Thomas. You may recall that I voted against each of these nominees.

But, today Madam President, I will vote for Judge Ginsburg.

Her presence on the Court will mean a great deal. She has said that she hoped her appointment to the Court would contribute:

To the end of the days when women—at least half the talent pool in our society—appear in high places only as one-at-a-time performers.

Madam President, Judge Ginsburg deserves to take a seat on this High Court and I strongly support her nomination.

Mr. KENNEDY. Madam President, I give my strong support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court.

The Judiciary Committee's recent hearings on her nomination reminded all of us of the genius of the framers of our Constitution and of the central role of the Supreme Court in preserving and protecting our constitutional legacy. The Constitution simultaneously establishes our democracy and protects minorities from occasional excesses by the majority. The framers recognized that an independent judiciary is necessary to enforce the limits on abusive government enshrined in our Constitution, and they entrusted the Supreme Court the solemn power to protect the fundamental rights and liberties of the people.

Ruth Bader Ginsburg's brilliant career as a law professor and advocate for the rights of women, and her distinguished career as a judge on the Federal Court of Appeals, makes it clear that she is extremely well qualified to sit on the Supreme Court.

Her carefully designed and brilliantly executed strategy for securing constitutional protection for the rights of women has made America a better and fairer land. Before 1971, when Judge Ginsburg argued her first case in the Supreme Court, the courts consistently upheld laws that discriminated against women. The most blatant of these measures were outright prohibitions on the entry of women into certain professions, including the legal profession itself. Other laws established more subtle gender classifications that perpetuated harmful and unjust stereotypes about women and their role in society.

Ruth Bader Ginsburg courageously took on these unfair laws. She carefully selected cases that highlighted the arbitrary nature of sex discrimination. By choosing cases where men appeared to be victimized by laws that seemed to favor women, she was able to convince the nine male members of the

Supreme Court that sex discrimination was unfair and unconstitutional. Building case after case, she gradually persuaded the Court to recognize that most gender classifications—even those purporting to protect women—actually worked to relegate women to second-class status.

While on the bench, Judge Ginsburg impressed both liberals and conservatives with her scholarly and careful approach. At the same time, she has demonstrated great sensitivity to the need to afford access to the courts and meaningful relief to victims of discrimination.

Judge Ginsburg is clearly committed to construing the civil rights laws in the manner that Congress intended. She described those laws as "broad charters * * * stat[ing] grand principles representing the highest aspirations of our Nation to be a Nation that is open and free where all people will have opportunity."

Too often in recent years, the Supreme Court has adopted excessively narrow interpretations of these laws, contrary to Congress' intentions, and has placed needless obstacles in the path of victims of discrimination. Justice Ginsburg will reject that destructive trend in the Court's jurisprudence on civil rights, and she will be a strong voice for equal justice for all citizens on the Supreme Court.

Judge Ginsburg's testimony before the committee demonstrated her profound commitment to constitutional protection for the right to privacy, and in particular for a woman's right to choose. She made clear, in no uncertain terms, that the right of a woman to decide whether to terminate her pregnancy is, and must be, protected by the Constitution. As she stated, "This is something central to a woman's life, to her dignity. It is a decision that she must make for herself. And when government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices."

Judge Ginsburg will bring to her work on the Supreme Court an outstanding intellect, excellent judgment, and a deep understanding of the role of that Court in protecting the constitutional rights and liberties of all Americans.

President Clinton has made an outstanding choice, and it is a privilege to vote for her confirmation.

Mr. HARKIN. Madam President, I am pleased to rise in support of the nomination of Judge Ruth Bader Ginsburg to serve as an Associate Justice of the Supreme Court of the United States.

Judge Ginsburg has established a distinguished record as a judge of the D.C. Circuit Court, which is widely considered to be the most influential and important circuit in the Nation. An analysis of her record reveals a deep commitment to individual rights. She is

known as a thoughtful judge who approaches each case individually, and makes an effort to apply the law to the facts. Although I would not endorse her decision in every case, that is not, and should not be, the criteria we should apply to nominees.

However, as I stated nearly 2 years ago during the confirmation of Justice Thomas, I believe it is appropriate for Senators to consider a nominee's overall understanding of the Constitution, and particularly the scope of constitutionally protected rights. I am particularly concerned with the erosion of the right to privacy.

A nominee's view of the right to privacy is indicative of that person's overall judicial philosophy, and their views of protected rights. I believe that the right to privacy is as fundamental as other protected rights, such as the right to free speech. As I stated during the Thomas confirmation, just as I would not vote for a nominee who did not acknowledge the right to free speech as a broadly applicable individual right, I cannot support a nominee who does not believe in the right of privacy. In the instance of Justice Thomas, I was compelled to vote "no." In this instance, application of that same standard allows me to vote in favor of this nominee.

The controversy over Judge Ginsburg's views on this point were raised in a speech she gave at the New York University School of Law, where she suggested that the right to choose could have been guaranteed under the equal protection clause, rather than the due process clause right to privacy.

However, in her testimony before the Judiciary Committee, she unambiguously endorsed the existence of a constitutionally protected right to privacy. Ginsburg endorsed the constitutional right to privacy, which she stated consists of at least two distinguishable parts. One part is the privacy of the fourth amendment, that government shall not break into a person's home or office without a warrant based on probable cause. The other part is personal autonomy, that the government shall not make my decisions for me. These statements satisfy my concerns on this issue.

In addition to this issue, however, I have been impressed by this nominee's personal history. From her repeated experiences with gender discrimination to her landmark argument before the Supreme Court that changed the landscape of civil rights law, she has demonstrated a commitment to defending the rights of individuals. I believe that Judge Ginsburg is well-qualified to serve on the Court, and I am pleased to cast my vote in favor of her nomination.

Mr. HEFLIN. Madam President, I am pleased to support the appointment of Ruth Bader Ginsburg to the Supreme Court. Her record is one of unbroken

success at all levels, and I am confident that the Supreme Court will be a fitting capstone on a career that is already distinguished.

Ruth Bader Ginsburg has already proved to be a genuinely outstanding jurist, and I recommend her confirmation for the Supreme Court with no reservations.

As a scholar, this nominee's brilliance is undisputed. At every turn of her career, she has earned recognition for the quality of her legal mind. As an advocate, her strategies for dismantling gender discrimination won her five victories in six Supreme Court arguments. In reviewing her career and her scholarship, the American Bar Association unanimously honors her with its highest ranking, the label of well-qualified.

At the same time, Madam President, though she has lived a life in the law, Ruth Bader Ginsburg has not been locked in a judicial ivory tower: As I watched the light in Judge Ginsburg's eye when she described her clients, I understood that she shares a knowledge which all great lawyers share—a recognition that when she devised a strategy for winning cases, she was also devising a strategy for making the lives of clients like Sally Reed and Steven Wiesenfeld better.

Just as important, Judge Ginsburg demonstrates the evenhandedness that is a precondition of a sound judging philosophy. Her service on the Nation's most prominent appeals court has won praise from scholars of every political stripe: ELEANOR HOLMES NORTON and Robert Bork are on the same side of this nomination, and that sight at first had my head spinning. While other jurists have been identified in politician's labels, as part of either a right or left leaning bloc, Judge Ginsburg's independence has been her trademark. On the D.C. circuit, the record shows that she has put aside her advocate's stance, and any ideological agenda that might have come with it.

This judge's mind has indeed been an open one. In the field of civil rights she has charted a middle ground between legitimate remedies for past discrimination and so-called remedies that merely divide us. For example, in *O'Donnell Construction versus District of Columbia*, her separate opinion rejects an affirmative action plan that swept too broadly, while still holding the door open for measures that are a reasonable response to our discriminatory history. With regard to the first amendment, Judge Ginsburg has never lost sight of the right to speak and be heard—yet she is no absolutist, writing often of the need to weigh the speaker's rights against legitimate, significant government interests.

In the context of the criminal law, Judge Ginsburg's record acknowledges the needs of our law-enforcement officials while still maintaining a sharp

instinct for the individual's rights. On several occasions, she refused to side with knee-jerk criticisms of drug-courier profiles and the strategy of preventive detention; while some have brought their ideological blinders to the debate over law-enforcement techniques, Judge Ginsburg has been responsive, and not intolerant, to the demands of the war on crime.

At the same time, she has vigilantly protected the proper, established boundaries of the fourth amendment. In *United States versus Ross*, in a landmark opinion for the circuit sitting banc, Judge Ginsburg refused to weaken constitutional safeguards against improper searches of automobiles. She has also consistently overturned convictions marred by improper trial procedures or inadequate jury instructions. By any impartial analysis, her record has been sensitive rather than activist, in securing defendants' rights.

In all three of these ideological fire zones—civil rights, the first amendment, and criminal procedure—Ruth Bader Ginsburg has woven an independent, middle-of-the road path. She has shown an immunity from the polarizations of the left and right. This resistance to ideological dogma is, in my opinion, a trademark of a fair, open mind, and of a willingness to listen without prejudging.

Madam President, I view this nomination as, at the very least, a ceasefire—a pause between the broadsides of politics and ideology. I am deeply hopeful that it can be even more: Judge Ginsburg's selection can mark a renewed emphasis on excellence and judicial accomplishment.

In choosing a nominee of this caliber, a professional who can be described as a lawyer's lawyer and a judge's judge, President Clinton has signaled a high standard. If this standard is indeed a beacon for appointments to come, we will enter an era of jurists who reflect honor on the Constitution and the ideals preserved within it. This will indeed be a Supreme Court that we are confirming, and it will reflect honor on the American people.

Mr. KOHL. Madam President, I join my colleagues in congratulating Chairman BIDEN and Senator HATCH for their work on the Ginsburg nomination. The chairman and the ranking member deserve credit for handling the entire process with dignity and intelligence. All of us on the committee are grateful that, rather than shocking America, this hearing may have instead reassured Americans, and helped to restore their faith in our institutions of Government.

I do have some reservations about the extent to which Judge Ginsburg answered our questions. But I have no reservations about her ability to serve on the Court. Let me tell you why I voted for her.

First, Judge Ginsburg has demonstrated the necessary character,

competence and integrity to sit on our Nation's highest court. As a law student, she achieved honors at a time when few women were even permitted to attend law school. As an advocate, she led the fight to ensure gender equality for women. As an appellate judge, she served with distinction. And at the hearing, she confirmed that she possesses the exceptional intellect required of a Supreme Court Justice.

Second, both on the bench and before this committee, Judge Ginsburg displayed an understanding of, and respect for, the values which form the core of our constitutional system of government. She rejected the doctrine of original intent, which could undermine many of the Court's most important achievements. She accepted an approach to statutory interpretation that relies on legislative history as an anchor for understanding. She spoke forcefully in support of the right to privacy, and, in opposition to all forms of discrimination. In her 13 years on the bench, she has demonstrated an uncommon fidelity to applying precedent, to judicial restraint, and to the Rule of Law.

Most importantly, Judge Ginsburg seemed committed to protecting the civil rights and civil liberties of all Americans. As she told this committee, "the whole thrust of the Constitution is, people have rights and government must be kept from trampling on them." I could not agree more.

Despite my admiration for Judge Ginsburg, I was disappointed by her don't ask, don't tell, don't pursue strategy of responding to questions. And others on the committee—among them Senators SPECTER, COHEN, and MOSELEY-BRAUN—have also expressed disappointment in some of her responses. Of course, Judge Ginsburg did not need to disclose how she would vote on cases that might come before her. But she should have revealed more about how she would approach these cases, what reasoning and methodology she would apply to them, and which factors and materials she would find relevant. Judge Ginsburg was hardly a stealth candidate, but she was—at times—a stealth witness.

We all recognize the movements in the dance of the confirmation: Nominees answer about as many questions as they believe they have to in order to be confirmed. Nevertheless, I would not advise future Supreme Court nominees—with less comprehensive paper trails—to adopt a similarly evasive approach. After all, as Judge Ginsburg herself noted, "In an appointment to the U.S. Supreme Court, the Senate comes second, but is not secondary." I hope that the next nominee will take Judge Ginsburg's own advice to heart.

Still, as I reflect on the confirmation hearing, I keep on returning to how Judge Ginsburg told me she wanted to be remembered, "As someone who

cares about people and does the best she can with the talent she has to make a contribution to a better world."

I believe Judge Ginsburg will be such a Justice, and that is why I voted in favor of her confirmation.

Mr. DODD. Madam President, I rise today in strong support of the nomination of Judge Ruth Bader Ginsburg to be a Justice of the U.S. Supreme Court. Based on my review of her qualifications, including her academic writings, judicial opinions, and testimony before the Senate Judiciary Committee, I am confident that Judge Ginsburg has the requisite skills, character, and commitment to the Constitution for service on our Nation's highest court.

As Senators, we bear an enormous responsibility when fulfilling our constitutional duty to provide advice and consent to the President—and to the American people—on judicial nominations. These decisions are particularly important given the nature of judicial appointments. Nominees to the Federal bench, if confirmed, enjoy life tenure and are charged with the awesome responsibility of interpreting and applying the Constitution. Consequently, Federal judges—particularly Justices of the Supreme Court—have an opportunity to influence the policies of this Nation for years to come.

Although article II of the Constitution gives the Senate the responsibility to provide advice and consent on judicial nominations, it does not delineate the factors by which each Senator should evaluate the fitness of a judicial nominee. Accordingly, each Senator must determine for himself or herself the appropriate criteria for considering the qualifications of a nominee.

I have explained my approach to this responsibility on several occasions in the past. In my view, each Senator must begin and end his or her evaluation of the nominee with one overriding question: Is confirmation of this nominee in the best interest of the United States?

Answering this question in the affirmative first requires that each Senator be satisfied that the nominee possesses the technical and legal skills that we must demand of Federal judges.

Since 1980, Judge Ginsburg has served with distinction on the U.S. Court of Appeals for the District of Columbia. Prior to that, she taught at both Columbia University Law School and Rutgers University Law School. Of course, it was during her tenure at Columbia that Judge Ginsburg briefed and argued a key series of cases before the Supreme Court, which resulted in the invalidation of laws discriminating against women—from *Frontiero versus Richardson* in 1973 to *Duren versus Missouri* in 1979. In light of that exemplary career, it is not surprising that the American Bar Association gave her

its highest rating. Clearly, Judge Ginsburg possesses the appropriate legal skills.

Our next task is to determine whether the nominee is of the highest character and free from any conflicts of interest. Throughout the confirmation process, the Senate has heard nothing but the highest praise for Judge Ginsburg's character and integrity.

Finally, we must carefully consider the nominee's record to determine whether he or she is capable of, and committed to, upholding the Constitution and protecting the individual rights and liberties guaranteed therein. Toward that end, we must ask whether the nominee has the judicial temperament necessary to give a practical meaning to our Constitution's guarantees. We may disagree about the interpretation of various constitutional provisions, but the nominee's views must be within the appropriate range, and his or her approach must reflect a deep commitment to our constitutional ideals.

An analysis of Judge Ginsburg's career and testimony before the Senate Judiciary Committee reveals that she has a deep and abiding commitment to our constitutional ideals. Both her early battles against discrimination and her judicial rulings suggest that she will protect the rights and liberties of all individuals after her elevation to the Supreme Court.

Judge Ginsburg's statements recounting the discrimination she faced, both religious and gender-related, are particularly moving. Recalling her childhood, Judge Ginsburg noted passing a resort in Pennsylvania that had a sign stating, "No dogs or Jews allowed."

When she attended Harvard Law School there were only 8 other women in her class of 400, and the Dean asked her to justify taking a place in the class that otherwise would have gone to a man. Despite that slight and other indignities, she would go on to serve on the Harvard Law Review and, after transferring to Columbia University's Law School for financial and family reasons, graduate near the top of her class.

Despite that impressive academic background, only two law firms in New York City offered her a second interview, and neither of them offered her a job. Additionally, Supreme Court Justice Felix Frankfurter brushed aside her attempt to obtain a clerkship because he did not think that the Court was ready for female clerks.

Despite those injustices, and who knows how many others, Judge Ginsburg battled on. I have already mentioned her groundbreaking work in the area of gender discrimination—an effort that serves as an inspiration to all Americans. But perhaps more important, Judge Ginsburg's judicial decisions indicate that she has not forgot-

ten the lessons of the past. She has repeatedly ruled in favor of individuals challenging discriminatory practices and unreasonable restrictions on basic civil rights.

Additionally, she reaffirmed her commitment to constitutional ideals throughout her testimony before the Senate Judiciary Committee. For example, in response to a question about discrimination based on sexual orientation, she stated that: "Rank discrimination is not a part of our Nation's culture—tolerance is." Her defense of abortion rights was also clear and concise: "[It] is something central to a woman's life, to her dignity. It's a decision that she must make for herself. And when Government controls that decision for her, she's being treated as less than a fully adult human responsible for her own choices."

As invariably happens, some Senators voiced concerns about the extent to which Judge Ginsburg answered certain questions during the confirmation hearings. But when her testimony—which actually covered a fairly wide range of issues—is considered in conjunction with her record, a fairly clear picture of her judicial philosophy emerges. She approaches each case prudently, with a sensitivity to the role of a judge in our democracy, and with an understanding that the Constitution holds basic individual rights inviolate.

In short, confirmation of Judge Ginsburg would be in the best interest of the United States, and when the Senate votes tomorrow on the nomination, I will vote to confirm.

Before concluding my remarks, I would like to commend the chairman of the Judiciary Committee, Senator BIDEN, and ranking minority member, Senator HATCH, on the changes they made in the committee's procedures relating to confirmation hearings—changes that are intended to be standard procedure in the future. From now on, the committee will go into executive session to hear any allegations of wrongdoing against the nominee. If any of the allegations warrant further investigation, the committee will then conduct public hearings on the matter. Additionally, the committee will now open up investigative matters to every Senator.

I understand that there were no allegations against Judge Ginsburg. Nonetheless, it is important to have these procedures in place. After the hearings on the nomination of Clarence Thomas, I noted that the committee's investigation would have been more effective if conducted in executive session and that gavel-to-gavel coverage under television's bright lights was not necessarily the best way to discern the truth. Hopefully, the committee's new procedures will help the Senate carry out its advice and consent duties, while protecting not only the rights of the nominee but also the public's right to know.

Mr. THURMOND. Madam President, we are now considering the nomination of Judge Ruth Bader Ginsburg to become an Associate Justice of the Supreme Court.

For 3 days before the Judiciary Committee, Judge Ginsburg publicly testified and answered questions concerning her qualifications and fitness to serve on the Supreme Court. She responded to inquiries concerning her opinions on the DC Circuit Court of Appeals as well as cases in which she had been involved, articles she had written, and speeches delivered.

There was some encouragement in her testimony particularly where she stated, and I quote, "Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians." While that statement gives us optimism, she also stated that she would look beyond the text of the Constitution when determining rights to be protected by the Court.

Additionally, Judge Ginsburg was crystal clear in her support for abortion rights during an exchange with our distinguished colleague, Senator BROWN. Yet, she repeatedly refused to be as forthcoming on the issue of capital punishment, which has been declared constitutional by the Supreme Court. She would only go so far as to acknowledge that the Court has held it constitutional since 1976. To find comfort in that answer on this issue, we must have faith in her adherence to precedents and stare decisis.

In other remarks, Judge Ginsburg suggested that the Court at times has a role to legislate. She stated and I quote, "When political avenues become dead-end streets, judicial intervention in the politics of the people may be essential in order to have effective politics." At other times, she embraced the principle of judicial restraint and appeared determined to decide cases narrowly and on the facts.

During another exchange, Judge Ginsburg found acceptable the broad reach of the Missouri versus Jenkins decision in which the Supreme Court, in my opinion, engaged in judicial activism by authorizing the Federal courts to order tax increases as a judicial remedy. I was disappointed with her answer on this matter.

However, Judge Ginsburg is a woman of integrity. She displayed a depth of knowledge concerning the law and demonstrated her ability to master and articulate complex issues. While Judge Ginsburg chose not to answer responsibly a great number of questions, each Member must determine if she otherwise satisfied their standards for serving on the Supreme Court.

Madam President, I am mindful that Judge Ginsburg is President Clinton's nominee, and I did not expect to agree

with her on all of the issues. Based on her lack of specificity in a number of areas, I cannot be certain as to where we disagree. Although I have reservations about this nominee, I like to support the President in choosing his nominees when I can. I shall give her the benefit of any doubts I have and shall support her.

Mrs. BOXER. Madam President, I am very proud to rise today in support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the U.S. Supreme Court.

During the campaign, President Clinton promised the American people that he would select Justices who possessed outstanding legal minds and big hearts. In nominating Judge Ginsburg, the President made good on his promise.

To the highest court in the land, Judge Ginsburg will bring a special combination of conviction, experience, and skill. She will bring the heart of a passionate advocate, who fought an historic and tireless battle against gender discrimination. She will bring the fine mind of a distinguished legal scholar, who both as a law professor and as a Federal judge, defied those who wanted to pigeonhole her as a liberal or a conservative and earned her reputation for independence.

Judge Ginsburg's work on behalf of the women of America has been heroic. She understands what it means to be discriminated against. Despite having graduated first in her class from Columbia Law School, no law firm would hire her. Even as a law professor, she was forced to hide her pregnancy, fearing that she would lose her job if anyone found out.

She has fought against discrimination by using the Constitution as a tool to challenge laws that limit women's opportunities. By convincing the Supreme Court that these laws violated the Constitution's grand promise of equal opportunity, Judge Ginsburg forced open those doors of equality, doors through which generations of women—including me and my daughter—have been able to walk.

Throughout her career, Judge Ginsburg has insisted that a woman's ability to be equal was dependent upon her right to choose. In a series of writing and speeches, Judge Ginsburg has reminded us that laws restricting a woman's right to choose deny us equal status under the law, keep us from competing equally in the workplace, and block us from being independent and equal participants in our Nation's future.

But, Madam President, despite her zealous advocacy for women's rights, Judge Ginsburg has kept her solemn promise to dispense impartial justice. In her 13 years as a judge on the D.C. Circuit Court of Appeals, she has never let ideology cloud her legal reasoning, she has never, in her own words, bent the rules to please the home crowd.

Finally, I really want to commend President Clinton for making this courageous and historic nomination. President Reagan deserves credit for nominating the first woman—Justice Sandra Day O'Connor—to serve on the Supreme Court. But, President Clinton understands that real equality is about moving beyond and breaking through the ceiling of the first woman, the first African-American, the first Latino. Real equality is about true representation, it is about nominating the second woman, the third, the fourth, and the fifth. It is about the nomination of Ruth Bader Ginsburg.

In her speech accepting President Clinton's nomination, Judge Ginsburg, remarked that she hoped it would mark the end of the days when women were seen as one-at-a-time performers. I could not agree with her more. Madam President, I am so proud to have this historic opportunity to vote in favor of Ruth Bader Ginsburg to become the second woman Justice on the U.S. Supreme Court.

Mr. RIEGLE. Madam President, it is with great pleasure that I rise today in support of the nomination of Judge Ruth Bader Ginsburg as Associate Justice to the U.S. Supreme Court. As his first nomination to the Supreme Court, President Clinton has chosen a jurist with superior academic and judicial credentials who will lend an important perspective to the Court.

On issues ranging from antitrust law to privacy rights, Judge Ginsburg has demonstrated a measured, equitable approach which transcends the simplistic political labels of conservative or progressive, Republican or Democrat. And while no Senator may be in agreement with each decision she has written or article she has published, I believe that all Senators can agree that Judge Ginsburg embodies the kind of reflective wisdom and independent judgment found in very great jurist and Supreme Court Justice in history.

Ruth Bader Ginsburg is responsible for the establishment of an entirely new branch of legal rights and equal protection. In numerous appearances before the Supreme Court in the 1970's, she won several landmark gender discrimination cases, invalidating the structural discrimination pervasive at that time. Through her groundbreaking work and successful litigation before the Court, Judge Ginsburg is personally responsible for launching the equal treatment of women in the workplace now required by law.

And although sex discrimination is still an unfortunate reality in our society, the tremendous legal progress of the past two decades is directly attributable to Judge Ginsburg's tireless efforts in this area. Drawing from her own firsthand experiences with gender discrimination, Judge Ginsburg brings an uncommon insight and perspective to the bench—a perspective that has

been severely underrepresented on the Supreme Court.

As a judge and a law professor, Ruth Bader Ginsburg has received numerous awards and honors. She has been given the highest recommendation possible by the American Bar Association—they unanimously voted her exceptionally well-qualified to be an Associate Justice. Judge Ginsburg has repeatedly been signed out as a top centrist judge by legal journals and judicial observers. And in her years as a professor, she was chosen by her peers as an outstanding law professor and received national recognition for her academic contributions.

I believe that in choosing this highly qualified candidate, President Clinton has shown his solid commitment to bringing the Court closer to the cultural diversity and gender composition of today's society.

I am pleased to support such a worthy candidate for Supreme Court Justice, and I urge my colleagues to confirm Judge Ginsburg unanimously.

Mr. BIDEN. Madam President, although we are not voting until tomorrow, I would like to ask for the yeas and nays on the Ginsburg nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. I thank the Chair.

Madam President, as I understand it, the distinguished Republican leader wishes to speak on this nomination in a few moments. He is at so many things which he is doing right now, I am not sure exactly when he will be down to speak. But other than the distinguished Senator from Kansas, I do not think there are any other Members seeking recognition to speak now or this afternoon.

So what I would like to suggest is to put in a quorum call in the expectation that the Senator from Kansas will be down shortly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BIDEN. Madam President, I see the distinguished Senator from New York has arrived. He is the chief sponsor, if you will, in the Senate of Ruth Bader Ginsburg. He is a man who, I might add, Madam President, told me and others about the intellectual prowess and judicial temperament of this fine nominee long before she was named to the Court. He cannot say this, but I can. When asked by the President of the United States who he would consider nominating for the Court if it were his Court, unequivocally and without hesitation he said Ruth Bader Ginsburg.

So I commend him on his being, as usual, way ahead of the curve. And I compliment the President and his staff for listening to the distinguished Senator from New York. I will now yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Thank you, Madam President.

May I thank the distinguished chairman of the committee who so successfully, gracefully brought this high matter of constitutional responsibility to this floor. This could not have happened without his efforts and that of his able, respected associate, Senator HATCH.

Madam President, exercising its constitutional responsibility to advise and consent, the Senate is perhaps most acutely attentive to its duty when it considers a nominee to the Supreme Court. That this is so reflects not only the importance of our Nation's highest tribunal, but also our recognition that while Members of the Congress and Presidents come and go—chief magistrates, as Woodrow Wilson described the Presidency—the tenure of a Supreme Court Justice can span generations.

We in the Senate, together with the President, create the third branch of the National Government; that is the judiciary. We thus owe special care that those charged with watchful vigilance over our constitutional charter be up to that task. So it was that in the past weeks the Committee on the Judiciary, led by Senators BIDEN and ORRIN G. HATCH, engaged in the most searching inquiry of Judge Ruth Bader Ginsburg.

That the committee unanimously determined that Judge Ginsburg should be the 107th Justice of the Supreme Court of the United States is further testament to an extraordinary career of 34 years in the law. Judge Ginsburg is perhaps best known as the lawyer and litigator who raised the issue of equal rights for women, equal protection of women under the Constitution, to the level of constitutional principle. She has also distinguished herself in a wide range of legal studies, and for the last 13 years has been one of our Nation's most respected jurists on the U.S. Court of Appeals for the District of Columbia Circuit.

For some months, I had hoped that the country would have the opportunity, as it has in these past weeks, to discern the qualities which make Judge Ginsburg so right for the job.

Senator BIDEN having mentioned it, I will own to the fact that on May 12, on a flight to New York, President Clinton very generously asked me who I would like to see appointed to the Court, and I replied that I thought there was only one name—Ruth Bader Ginsburg.

Later, as the administration was considering that recommendation, I would

pass on to the White House remarks made in 1985 by Erwin N. Griswold, former Solicitor General of the United States and dean of the Harvard Law School at the time Judge Ginsburg was a student there. Speaking before a special session of the Supreme Court commemorating the 50th anniversary of the opening of the Supreme Court Building—which they moved into in 1935—Dean Griswold made note of the work of attorneys who had appeared before the Court on behalf of special interest groups, as against individual appellants. He said:

I think, for example, of the work done in the early days of the NAACP, which was represented here by one of the country's great lawyers, Charles Hamilton Houston, work which was carried on later with great ability by Thurgood Marshall. And I may mention the work done by lawyers representing groups interested in the rights of women, of whom Ruth Bader Ginsburg was an outstanding example.

I must tell you that we in New York take special pride in her nomination. She was born and raised in Brooklyn. The day after her nomination, the front page of the New York Daily News exclaimed "A Judge Grows in Brooklyn." Judge Ginsburg attended Cornell University where she was elected to Phi Beta Kappa and graduated with high honors in government and distinction in all subjects, and later Columbia Law School, where she tied for the top rank in her class. Indeed, she actually attended two law schools, beginning at Harvard Law School, and finishing at Columbia so that she could be with her husband Martin, who had returned to New York to begin the practice of law. Never before Ruth Bader Ginsburg had anyone been a member of both the Harvard and Columbia Law Reviews.

With such a record, we would not think it surprising that she would be recommended to serve as a law clerk to Supreme Court Justice Felix Frankfurter. But in the world of that day, the legal profession was mostly for men only. That time is not far distant, Madam President; I was here in Washington in the Kennedy administration at the time that Justice Frankfurter stepped down. Arthur Goldberg succeeded him. We can just reach out and touch that time. And Justice Frankfurter was not prepared to hire a woman—it seemed it would not be right and not perhaps even fair. I can imagine him thinking that. And such was also the case with New York law firms, which had no place for her really—only two showing any interest.

She persevered, she triumphed, she transcended along this—working as a law clerk for Judge Edmund L. Palmieri of the U.S. District Court for the Southern District of New York, as an associate director at the Columbia Law School Project on International Procedure, as a professor of law at Rutgers University Law School. She was one of the first tenured female law pro-

fessors, in the country, and the first at Columbia University, where Michael Sovern was pleased to see that she was the first tenured appointment he would make once he became dean.

While at Columbia, then Professor Ginsburg became the moving force behind the Women's Rights Project of the American Civil Liberties Union. The prime architect of the fight to invalidate discriminatory laws or practices against individuals on the basis of gender, her imprint could be found in virtually every gender case which reached the court in the 1970's. She herself argued six cases before the Supreme Court winning five, and in the process fashioning lasting precedent for women's rights. To know something of even a couple of these cases is to understand the fundamental change which she brought about.

In one, *Frontiero versus Richardson*, Ruth Bader Ginsburg secured for women serving in our Armed Forces equal benefits for their dependents. Another case, *Weinberger versus Wiesenfeld*, involved a section of the Social Security Act providing survivor benefits to a widow with minor children, but not to a widower with minor children. Professor Ginsburg prevailed upon the Supreme Court to invalidate this provision as discriminatory, rejecting the gender-based stereotype that women's work is less worthy than men's.

Upon her nomination in 1980 to the U.S. Court of Appeals, the American Bar Association gave her its highest rating. Time has not dampened the ABA's enthusiasm, having offered its highest evaluation to Judge Ginsburg as a nominee to the Supreme Court. As a jurist, she embodies the view she expressed in the Sibley lecture at the University of Georgia School of Law in 1981:

[The] greatest figures [of the American judiciary] *** have been independent-thinking individuals with open, but not empty minds, individuals willing to listen and to learn. They have been skeptical of party lines and they have exhibited a readiness to reexamine their own premises, liberal or conservative, as thoroughly as those of others.

She believes that all of us, not just judges, have a duty to protect constitutional rights. As she put it in her opening statement before the Committee on the Judiciary, our Constitution "strives for a community where the least shall be heard and considered side by side with the greatest." Her opinions show a respect for the other branches of Government.

Ever mindful of our frailties, Judge Ginsburg put it so well in her statement before the Judiciary Committee when she embraced Judge Learned Hand's view of the spirit of liberty, as "one which is not too sure that it is right, and so seeks to understand the minds of other men and women and to weigh the interests of others alongside its own without bias."

Later, she quoted with approval the words of another New Yorker, Justice Benjamin Nathan Cardozo, who said: "Justice is not to be taken by storm. She is to be wooed by slow advances."

In confirming Ruth Bader Ginsburg as an Associate Justice of the Supreme Court of the United States, we do honor to ourselves and to the most vital traditions of our jurisprudence, which have worked to keep our society both ordered and free.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President. It is a great honor that I rise to express my whole-hearted support for this nomination.

During my service in the Senate, I have developed three fundamental criteria by which I judge a nominee's suitability for service on the Supreme Court: Is the nominee ethical, qualified, and within the philosophical mainstream of modern jurisprudence?

In the case of Judge Ginsburg, the answer on each of these three criteria is a resounding "Yes."

Madam President, I suggest the absence of a quorum.

First, Judge Ginsburg is superbly qualified. Any nominee for the highest court in the land must be in the forefront of the legal profession. This is clearly the case with Judge Ginsburg.

During her years as an advocate, Ruth Bader Ginsburg earned her place as pioneer in the then evolving area of gender discrimination law. And, today, countless women across America are better off because of her efforts.

While serving as counsel to the American Civil Liberties Union, Judge Ginsburg won five landmark cases before the Supreme Court. These cases resulted in a gradual expansion of the Court's interpretation of the equal protection clause as it is applied to gender discrimination cases.

Even with her success as an advocate, there is a absolutely no question about Judge Ginsburg's judicial temperament. She is within the mainstream of American jurisprudence. Although she began her judicial career with the background of a liberal, Judge Ginsburg is a clear and independent thinker. Her opinions show an abiding respect for the rule of law. On a wide range of legal issues she has proven herself to be a thoughtful, deliberate judge. She crafts her opinions narrowly and with deep respect for both precedent and the prerogatives of the two other branches of Government.

Moreover, throughout her career, Judge Ginsburg has observed the highest ethical standards. Beyond merely complying with the law, Judge Ginsburg has gone out of her way to avoid even the appearance of impropriety. For instance, out of protest, she and her husband have resigned from two private clubs that appeared to have dis-

criminatory membership policies. She understands that judges ought to live by the rules they set for the rest of us.

In closing, I congratulate President Clinton for making this fine nomination. I am confident that Judge Ginsburg will make a great Justice of the U.S. Supreme Court.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate as in morning business.

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

BEYOND GOOD INTENTIONS: USING FORCE IN BOSNIA AND SOMALIA

Mr. MCCAIN. Mr. President, today and this week, we are understandably focused on domestic issues. A national debate is raging over the President's proposed deficit-reduction plan and, understandably, the focus of the American people and to some extent, the world is focused on this overriding domestic issue.

But I think it is important to point out that we stand at a defining moment of the post-cold-war era. Once again, we are present at the creation, just as we were at the end of World War II; once again, we must redefine our role in the world.

Mr. President, I am calling today for President Clinton to come to the Congress and the American people and explain what our goals and strategy are in Bosnia and Somalia. Will we commit American military force to Bosnia? If so, under what circumstances? What are the military and strategic goals? How long do we expect the United States to be militarily engaged? And what are the rules of the engagement?

In the media, there are ample reports that the United States intends to use air power in Bosnia. The use of air power may be justified. I think that all Americans would strongly support military action to prevent a massacre of innocent civilians, whether it be in Sarajevo or anyplace else in the world. But, Mr. President, the American people need to know the parameters of this military involvement, what we intend to accomplish in the long term, as well as the short term, and how we intend to do it.

On numerous occasions when the United States has been involved militarily in places throughout the world, Members of this body, especially on the other side of the aisle, have come to this floor and called for the invocation

of the War Powers Act. I am not saying that that is appropriate at this time. But I am saying that consultation with Congress and the American people is critical before we send young men and women into conflict in the region.

I have to tell you, Mr. President, I am deeply disappointed that so far the Clinton administration has not consulted with the American people or with Members on this side of the aisle as to what military action is being contemplated. Those are my constituents in the military whose lives may be at risk, just as they are the President's.

There has been a tradition since World War II that partisanship ends at the water's edge. There has been virtually no consultation between the President of the United States and Members of this body on this side of the aisle. I strongly recommend that he do so before initiating military action.

I want to emphasize Americans are not ready to watch people get massacred if they can prevent it. An open-ended military commitment in the region, such as we are seeing in Somalia, is something that the American people will not support. We have ample proof that unless we have the support of the American people, military enterprises of any duration are doomed to failure.

Mr. President, we must develop a clear and consistent policy for peace enforcement and nation building. We must choose how to reshape American strategy and American forces, and we must choose carefully indeed.

Day by day we are discovering in Bosnia and Somalia that the end of the cold war does not mean the end of history. We are discovering that we still have to deal with 20-30 conflicts and crisis points throughout the world—just as we did every day of every year after World War II. We are discovering that there are sharp limits to the peace dividends we can draw before we risk a level of weakness that will lead to new wars.

We are confronted by a critical dilemma. If we remain indifferent to the world, then the world's problems will inevitably come to visit us in our homeland. They may not be military threats, but they will be threats to our economy, our interests, and our allies. They will threaten our political and moral values, and they will inevitably unleash the use of weapons of mass destruction.

If, however, we commit our prestige and our forces carelessly, we will waste resources we cannot afford. Our good intentions will lead us down the road to military intervention as a substitute for statesmanship and inevitably to political and military failure.

PAVING THE ROAD TO HELL WITH GOOD INTENTIONS

There are many roads to hell that are not paved with good intentions. Good intentions alone, however, are not a

substitute for strategy, for policy, for clearly defined goals and objectives, and for conditioning the use of our military forces to a clear assessment of risks and a high confidence that we will be successful.

In the name of humanitarian causes, peacekeeping, and other ideals, we may blunder in where we then have to blunder out. We will waste our precious moral and political capital, and potentially that of the United Nations as well.

Rhetoric about cooperative security, and invoking the name of the United Nations, are not a substitute for a clearly defined foreign policy. Nor, is reacting out of disarray to the events of the day is not a substitute for a sustainable implementation of that foreign policy.

Making a limited commitment of U.S. military forces without a clearly defined plan that takes into account the risk of escalation or retreat, is not a substitute for military planning and military expertise.

CAUTION AND THE USE OF ARMS

It is easy for politicians and civilians to talk blithely about using military force, or accuse the military of being hesitant and obstructive. Politicians risk little, and arm chair generals risk even less.

The fact, is, however, that military force is only successful if it serves a clearly defined policy, if it has clearly defined objectives, if it is capable of dealing with the inevitable uncertainties of war, and if the cost of using that force is matched with the value of the objective. If force is truly an extension of diplomacy by other means, it is sometimes successful. If it is intended as answer to the failure of diplomacy, it is almost never successful.

Many of yesterday's doves have forgotten this as they become today's hawks. However, we cannot afford to remember the gulf war, Panama, and Grenada without remembering Vietnam and Lebanon, or the high cost of the Korean war. We cannot afford to act on the impulse of the moment, no matter how noble that impulse is, and not think through the possible consequences of our actions.

Military leaders have good reason to remember the cost of trying to use force without a basis in sound policy, without clearly defined objective, without adequate means, without the ability to retreat or escalate, and—most importantly—without public support.

They have reasons for caution that long predate America's recent problems. Nearly 2,500 years ago, Xenophon wrote the first classic military biography. The "Anabasis," about a force trapped into retreating from a political disaster. At virtually the same time, Thucydides wrote the "Peloponnesian Wars," the first real military history.

This lesson describes Athens' reckless commitment to intervention in

Syracuse that was the key factor in the destruction of the world's first real experiment in democracy and in creating a new world order.

Thucydides' words are as relevant today as they were then:

This was the greatest event in the war, or in my opinion, in Greek history; at once most glorious to the victors and most calamitous to the conquered. They were beaten at all points and altogether; their sufferings in every way were great. They were totally destroyed—their fleet, their army, everything—and few of many returned home. So ended the Sicilian expedition.

I do not believe we face any such risk. We are too strong to suffer a major defeat of arms. We can, however, suffer a defeat that is even more important if we go into Bosnia without clearly defined and obtainable goals, or if we allow ourselves to take sides in the civil war in Somalia without having any ability to bring that war to a successful end.

We can waste our credibility and capability, and that of the United Nations, in failure. If we do, we are unlikely to have similar opportunities again. The American people and the world will accept sacrifice in the name of good causes if that sacrifice is the result of sound policies, achievable objectives, and is cogently explained to them. I do not believe, however, that they will support costly open-ended engagements that cost lives and vast amounts of resources.

WARFARE BY WEATHERVANE

At present, the administration gives the appearance of being a weathervane. Its policies not only seem to be in disarray, they seem to blow with the wind. They shift with the crisis of the day, what is on our television screens, or what seems expedient at the moment.

Consider how the winds shift in the case of Bosnia. We will use force, we will not use force. We must have European support, we will act alone. We will protect the U.N. peacekeepers, we will help the Serbs protect themselves. We will provide humanitarian relief, we will help shape a peace. Vance-Owen is in, Vance-Owen is out. We will follow the lead of the U.N. we have the authority to act alone.

In the case of Somalia, the winds have blown us from a narrow well-defined humanitarian mission to taking sides in a prolonged hunt for a Somali warlord. We have moved from relief effort to peace enforcement to taking sides, and we seem to be on the edge of moving towards nation building. We know whom we are chasing. We may not know why we are chasing him, or what we will do if we catch him.

THE QUESTIONS THAT PRESIDENT CLINTON MUST ANSWER

This is why I believe that it is vital that President Clinton clearly define his policy towards peacekeeping, explain his goals for using force in

Bosnia, and explain his goals for using force in Somalia.

To be specific, we need the President to come firmly and publicly to grips with six key issues:

First, the President has been in office long enough to tell us his vision of the role of the United States in peace keeping, peace enforcement, and nation building. We need a Clinton doctrine. We need one we can debate and use to shape a national and international consensus.

Second, the President needs to clearly define his conditions for using military force, and how he intends to consult the Congress. We need a clear picture of the criteria the President will use in judging whether to risk American lives. We need to know under what conditions he will be willing to escalate or sustain American military commitments. We need to know whether he will seek the approval of the Congress, and how he will seek that approval.

Third, the President needs to clearly define the role of the United States relative to the United Nations and our allies. We cannot keep shifting basic policy towards our relationship with the U.N. and Europe. We must set clear criteria for how we will treat U.N. decisions and for our involvement in U.N. actions. We must set clear criteria for what we want Europe to do, and to stick with them. We must put a firm end to reversing our position from day to day, and often in the full view of the entire world.

Fourth, the President needs to clearly define his policy towards military intervention in Bosnia. It is painfully clear that he is not sure from moment to moment whether we are protecting the U.N. peacekeepers, protecting the Muslims, pressuring the Serbs and Croats to accept partition, or pressuring the Serbs and Croats to accept a different kind of peace.

If we are to commit force, we need to know the extent to which we truly insist on U.N. and European support. We need to know the extent to which we are prepared to escalate and where we will halt. We need to make it clear to all sides what our goal really is, and we need to be certain our military and the American people can support and sustain the effort to meet the goal.

Fifth, the President needs to define why we are in Somalia and what we intend to do there. He needs to state clearly whether we have accepted an open-ended commitment to peace enforcement and nation building. He needs to define what we expect from the United Nations and other nations, and the limits to our involvement. He needs to go beyond the manhunt and the headlines, and define our ultimate goal and how he intends to achieve it.

Finally, the President urgently needs to redefine the goal of his military strategy, defense budget, and bottom up review. It is painfully clear that we

cannot shape our strategy or forces simply by setting an arbitrary budget ceiling, and then try to meet new commitments within that ceiling. We need a clear picture of where we will keep our forces, how we will reshape them for peace enforcement and humanitarian missions, how we will adapt them to work with the U.N. and other nations, and how we will give them the readiness and decisive technical edge to ensure their success.

Mr. President, at the end of this week Congress will go out of session. Members will be scattered to the four corners of this country.

We need to discuss this issue and debate it, and come to a conclusion in Congress if the President intends to dramatically escalate the use of American military force in Bosnia. And we need to do so soon.

Otherwise, we will have scant chance of building a consensus here in the Congress or in the country.

Mr. President, I yield the floor.

SUPREME COURT OF THE UNITED STATES

The nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice of the Supreme Court of the United States.

The Senate continued with the consideration of the nomination.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, is the Ginsburg nomination the pending business?

The PRESIDING OFFICER. The Senator is correct.

JUDGE RUTH BADER GINSBURG

Mr. DOLE. Mr. President, tomorrow, I will vote to confirm the nomination of Judge Ruth Bader Ginsburg.

A top student at both Harvard and Columbia Law Schools, a law professor at Rutgers University, and a respected judge on the D.C. Court of Appeals for nearly 13 years, Judge Ginsburg certainly has a record of academic and professional achievement that would prepare anyone for service on the Nation's highest Court. By any measure, she is qualified to become the Supreme Court's ninth Justice.

Judge Ginsburg also has the temperament that one would want, and expect, in a Supreme Court Justice. During her hearings before the Senate Judiciary Committee, she displayed both a cool rationality and an open mind, a combination that inspires both respect and confidence.

Now, I do not agree with all of Judge Ginsburg's past judicial decisions, nor do I agree with every position she has taken in her considerable body of academic writings. If a Republican were in the White House, Judge Ginsburg would not have been nominated.

Nevertheless, I am convinced that Judge Ginsburg understands the proper role of a Supreme Court Justice and the function of the judiciary in our three-branch democracy.

Judges must apply the law neutrally to the particular facts of each particular case. They must look to precedent when reaching their decisions. But they must not impose their own personal policy preferences in order to achieve favored outcomes. The job of legislating belongs to Congress and to the State legislatures, not to the Supreme Court.

I believe Judge Ginsburg understands this. During her tenure as a court of appeals judge, she may have shown a streak of judicial activism on occasion, but for the most part her record is that of a moderate, reasoning by precedent and mindful of the importance of restraint and caution. In fact, some have criticized Judge Ginsburg for being more interested in the fine print rather than the big picture, and for being a legal technician rather than an interpretive philosopher—criticisms that Judge Ginsburg should wear as a badge of honor.

Finally, Mr. President, I want to commend Senator BIDEN, the chairman of the Judiciary Committee, and the committee's ranking member, Senator HATCH, for conducting a closed-session hearing as part of their deliberations on the Ginsburg nomination. For future nominees, I hope the committee continues this practice. It is perhaps the only way to protect nominees from the considerable embarrassment that may result when groundless or easily explainable charges of a personal nature are given a public airing. My only regret is that the committee did not resort to a closed session when personal attacks were made against the last Supreme Court nominee, Justice Thomas.

We have learned from that. I think that is probably the reason now.

I think it has already been stated by the chairman of the committee. But I want to reemphasize the record to show again that the Judiciary committee began its hearings on July 20, a mere 36 days after the Ginsburg nomination was formally announced by President Clinton. No Republican nominee to the Court in recent history has been considered so expeditiously.

I wish Judge Ginsburg the very best as she assumes that awesome responsibility of sitting on our Nation's highest Court. Needless to say, I look forward to having a neighbor that I can proudly call Madam Justice.

Mr. BIDEN. Mr. President, I would like to thank the Republican leader for his compliment and acknowledgement. What he said about the speed with which we moved is absolutely accurate. I hope the Democrats do keep that in mind if things change in 3 years. I also point out that however long it may be,

but as long as I am chair of the committee—and I think my view is shared by all members of the committee—we will continue to have a closed hearing. I believe it is a necessary change and innovation for the very reasons the Senator has indicated.

Last, I point out a little known fact—and I mean it sincerely—I did offer to the President of the United States and I did offer to the nominee, who was referred to, an opportunity to have that entire matter in a closed hearing. It was the choice of the nominee, and I do not criticize that choice. I understand it, in light of the fact that the charges were already made public against him. It was almost impossible for him to agree to that. But there was the opportunity offered, under rule XXVI of the Senate, to go in closed session relating to those charges. It was probably beyond anybody's control at that point. I do not say that by way of excuse, only by way of explanation.

I thank the Republican leader for his comments and, hopefully, we can move as expeditiously on Republican nominees as we have on Democratic if and when that time returns.

Mr. DOLE. Mr. President, I thank the distinguished chairman, my friend. There is no doubt about it, they did their job well, and I think that is why it moved so expeditiously.

I would like, if I may, to proceed as in morning business on another matter for about two minutes.

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

EISENHOWER NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Mr. DOLE. Mr. President, on July 29, I was honored to participate in a ceremony held here in the Capitol, to honor President Dwight D. Eisenhower and unveil the new Eisenhower Interstate System sign.

I was joined by President Eisenhower's son and granddaughter Susan, the Secretary of Transportation, and several of my colleagues in both the House and the Senate, in honoring the vision of a man who worked tirelessly to see the Interstate Highway System come to reality.

The unveiling of the newly appointed sign, which will be placed throughout the Nation, commemorates Dwight D. Eisenhower's dedication and perseverance. Our colleague, the late Senator John Heinz should also be recognized and honored for being a sponsor of the 1990 legislation which redesignated the National System of Interstate and Defense Highways as the Dwight D. Eisenhower System of Interstate and Defense Highways. President George Bush signed this legislation on October 15, 1990.

In 1991, the Congress enacted legislation requiring the Secretary of Transportation to conduct a study and report to Congress on a recommended

sign to be placed on the interstate highways. This legislation was signed by President Bush on December 18, 1991. The report, which recommended a sign be developed, was completed and forwarded to Congress on January 14 of this year. Ralph Becker deserves a great deal of credit for his hard work and devotion to this project and for his work in the development of this new Eisenhower Interstate System sign.

Each State will be encouraged to place the sign along the Interstate System throughout the country. For both Republicans and Democrats alike, as friends of the Eisenhower family, it was an honor to be a part of this tribute to Dwight D. Eisenhower.

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

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

NOMINATION OF JEFFREY E. GARTEN OF NEW YORK REFERRED TO COMMITTEE ON FINANCE AND COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BIDEN. Mr. President, as in executive session, I ask unanimous consent that the nomination of Jeffrey E. Garten, of New York, to be Under Secretary of Commerce for International Trade, presently being held at the desk, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

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

MORNING BUSINESS

Mr. BIDEN. I ask that there now be a period for morning business.

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

THE PASSING OF CONGRESSMAN PAUL HENRY

Mr. RIEGLE. Madam President, I rise to call attention to the very sad fact of the passing of our much esteemed House colleague, PAUL HENRY, of Michigan.

PAUL has waged, over the last several months, a very courageous battle against a brain cancer condition and did so with great dignity and with the love and support of his family and his staff and everyone in Michigan who knew him. We lost him on Sunday, just a day ago. His loss is a very great loss, not just for our State but for the country as well.

I want to extend my deepest sympathies today to his wife, Karen, and his children, Megan and Jordan and Kara. I know above everything else PAUL was a devoted husband and loving father, and I know how deeply they miss him now.

Tomorrow morning we will be having a ceremony for him in Michigan. I will be traveling now with other members of the delegation. I will not be able to be here for the votes tomorrow morning. I so announce now. I will attempt to either find pairs for those votes or try to at least declare how I would have voted if I were here. But I feel it appropriate to be present for his service in Grand Rapids tomorrow morning.

He will be remembered by all as an intelligent and conscientious public servant who had the courage to act upon his convictions. And he was not afraid to buck the party line when he thought it was the right thing to do. He was a very thoughtful person, a natural teacher, and was a teacher, prior to his coming to the Congress, who tried hard to help people understand the issues and to persuade them to agree with him by the use of logic and reasoning.

He found great strength in his religious values throughout his public service career. As a professor of political science at Calvin College and as a Michigan State legislator and then, finally, as a U.S. Congressman, there was discernible throughout his work a very steadfast grounding of devotion to the religious beliefs that he held, and those remained visible and strong throughout his entire public life.

Just a few months ago he himself wrote very moving words to the constituents of his congressional district. He said, "I will never be able to adequately thank all of you for your support, kindness, and love. My life is in God's hands, as it has always been. My walk with him goes on."

Those words were so typical of him and his orientation in the way he lived his life. It guided his daily work and personal life in every way.

So this was a very special Member of the House. He will be greatly missed by all who knew him. While he lost this fight that he was waging against the cancer problem, in doing so in the manner in which he did, he won the affection and respect of everyone.

His staff served him extraordinarily well during the difficult months of this year, and great tribute is due them for the service that they have rendered. As everyone struggled with the hope that there might be a turn in his medical circumstances and that he might be able to gain ground, no one ever surrendered that hope, but his staff performed magnificently during this period of time. I know they grieve now for him. I want to acknowledge with great respect the work that they have

done to represent the district in the Grand Rapids area.

PAUL HENRY accomplished much in the time that he was given. And he is now in the healing arms of God's grace. I yield the floor.

SINK THE SINC

Mr. PRESSLER. Mr. President, 18 of my colleagues and I recently sent a letter to the reconciliation bill conferees on an important provision for small business.

This provision, dubbed the so-called service industry noncompliance initiative or SINC would create a massive new blizzard of paperwork for small business. This proposal requires businesses to file 1099 forms with the Internal Revenue Service anytime they purchase more than \$600 in services from any incorporated business.

During Senate consideration of the reconciliation bill, I offered an amendment to strip this provision from the bill. The Senate unanimously voted, 0-98, against a motion to table my amendment, and subsequently, unanimously adopted it.

Mr. President, the SINC initiative is bad policy for small business and for this country. This requirement represents a massive new paperwork burden for America's entrepreneurs. The Small Business Legislative Council has said "extending information reporting to corporate service providers would vastly expand the amount of record-keeping and reporting necessary." The health insurance industry has threatened increased rates. The National Federation of Independent Business, an organization opposed to this reporting requirement from the beginning, said in a letter to all Members of Congress that "the enormous cost of this provision of the business community far outweighs any taxes that would be collected through increased compliance." From the Tax Executives Institute we hear that, "there continues to be no convincing evidence that the IRS would be able to process the millions of additional pieces of paper that would be generated under the proposal." Even the New York Times described this provision as "a blizzard of paperwork."

Obviously, the SINC proposal creators did not take small business into consideration when they were designing this new requirement. This propaperwork idea is typical of the big-government folks in Congress and the administration. Their philosophy is simple: enact any provision that will increase government revenue no matter how much it will cost small businesses to comply.

I would also like to point out that my counterpart in the House, Congresswoman JAN MEYERS, ranking member of the House Small Business Committee, together with Committee Chairman JOHN LAFALCE sent a letter

to conferees signed by 70 Representatives stating their opposition to this small business nightmare.

It is our hope the conferees will recede to the Senate language, which stripped the new paperwork provision from the reconciliation bill. If this proposal is enacted, America's small business men and women will be spending time filling out forms for the Government rather than expanding their businesses and creating jobs.

I ask unanimous consent that the letter to the conferees, together with two articles about the Senate's action to strike the SINC provision, be printed in the RECORD immediately following my remarks.

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

U.S. SENATE,

Washington, DC, July 19, 1993.

DEAR CONFEREES: The House-passed version of the Omnibus Budget Reconciliation Act of 1993 included a provision, section 14251, implementing the IRS's "Service Industry Non-Compliance (SINC) Initiative". During its debate on the Budget Reconciliation bill, the Senate unanimously adopted an amendment to delete the SINC provision, by a roll-call vote of 98-0. We strongly urge you not to include SINC in the Conference Report on H.R. 2264.

Section 14251 would require a business taxpayer to file a Form 1099 with the IRS, if more than \$600 in services are purchased from a corporate service provider during the tax year. The proponents of the provision assert that "when taxpayers know that the IRS has received information reports on payments made to them, they are more likely to file tax returns and to report their income accurately." The proponents also argue that the SINC Initiative would generate substantial tax revenues.

While there are substantial questions regarding the practical utility of the SINC Initiative or the amount of revenue that would actually be generated, we believe there is no question that the SINC Initiative would bury small businesses in a blizzard of paperwork requirements. Small business owners would be required to establish new and costly recordkeeping systems that would track expenditures for each of the many, many corporations, large and small, from which they are quite likely to obtain services. All that information gathering would be useless, if the \$600 threshold was not reached. Once the threshold was reached, SINC would require the small business owner to send the IRS a 1099 report regarding each corporate service provider and to incur the cost of sending a copy of the form to the firm from which the services had been obtained.

This recordkeeping burden is in addition to the burden of obtaining other information needed to complete the IRS Form 1099, such as an accurate and complete mailing address for the corporate service provider and the firm's taxpayer identification number. When dealing with larger, more established firms, this information collection effort would impose an onerous burden, but would be doable. With many other service providers, it might be nearly impossible in practical terms. One only has to think about the substantial challenge often encountered in trying to obtain a simple payment receipt from a Washington taxi driver.

The millions of hours of paperwork burden heaped upon the small business community

appears even more unreasonable, when there are very real questions regarding whether the IRS possesses the technical capability to make any effective use of the millions of additional Form 1099s that would be generated. While the IRS claimed that the SINC Initiative would bring in \$6.1 billion in additional revenue over five years, the Joint Committee on Taxation believes that \$411 million is a more accurate estimate. Given the costs associated with the new paperwork requirements, the Tax Executives Institute said, "there is a strong possibility that the cost to the payer community would exceed the revenues flowing to the Treasury." Without question those economic and management resources which the small business owner will have to divert to the new recordkeeping and reporting requirements, if the SINC Initiative is enacted, will not be available for economic growth and job creation.

While the goal of improving the tax code compliance of corporate service providers is laudable, it appears that the SINC Initiative, although under development by IRS for a number of years, is not ready for enactment. Indeed, if the IRS tried to impose this massive paperwork burden without a statutory mandate, it would not pass muster under the standards imposed by the Paperwork Reduction Act of 1980.

Enclosed is a reprint of an article from the New York Times, which provides an analysis of the issues presented by the SINC Initiative. Some have even suggested that if included the SINC Initiative has the potential to become the "Section 89" of the 1993 Budget Reconciliation Act.

In the pursuit of deficit reduction, we must not succumb to the temptation to heap real and costly recordkeeping and reporting burdens on the small business community for the hollow promise of additional tax revenues through improved compliance.

Sincerely,

Larry Pressler, Dale Bumpers, Christopher S. Bond, Malcolm Wallop, Paul Coverdell, Lauch Faircloth, Conrad Burns, Robert F. Bennett, Dan Coats, Dirk Kempthorne, Sam Nunn, Joseph I. Lieberman, Harris Wofford, Dianne Feinstein, Herb Kohl, Carl Levin, Carol Moseley-Braun, Howell Heflin, Frank H. Murkowski.

PAPERWORK REQUIREMENT WOULD INCREASE BURDEN

(By David Voight)

Senator Larry Pressler (R-S.D.), the top ranking Republican on the Senate Small Business Committee, was an active player in trying to make the tax portion of the budget reconciliation bill less onerous for small business. Of his two major initiatives, he was successful in one and lost the other even though he was able to get majority support for his position (procedural rules required a super majority of 60 votes—his amendment actually got 56).

His successful effort was to strike from the Senate bill a provision called the Service Industry Non-Compliance (SINC) initiative which would have tremendously increased the amount of paperwork required of small business. This initiative would require businesses to file 1099 forms for payments made for services to corporations as well as unincorporated individuals. Businesses owners would have to 1) require taxpayer identification numbers from every corporation they purchase a service from; 2) aggregate all payments for services made to any corporation during the year; and 3) fill out 1099 Forms for any corporation paid more than \$600 for services in a year.

The intent of this massive new paperwork requirement is to assist the IRS in increasing revenue by catching cheaters who are not filing or underreporting income. Ironically, however, the IRS already receives over one billion 1099 forms a year. Adding several hundred million more would simply overwhelm the unsophisticated IRS computer system. It would not enhance enforcement. It would become simply another senseless burden for small business.

Even though Pressler was successful in knocking this out of the Senate bill, it remains in the House passed version. This means that it is an item that House and Senate members will have to work out in a conference committee. Final action should come shortly before Congress begins an August work break. Groups will be working to make sure that the Pressler position prevails.

Pressler also teamed up with Sens. Roth (R-Del.) and Wallop (R-Wyo.) to attempt to exempt income retained in a small business or family farm from increases in individual tax rates that are contained in the budget bill. The U.S. Chamber pointed out some months ago that the proposed increases in individual rates would be especially hard on small businesses, including Subchapter S corporations.

Under the Roth-Wallop-Pressler proposal small businesses could continue to pay at the old rate for all income retained or reinvested. This would clearly be a tremendous help for expansion, modernization, and job creation by small business. Even though the sponsors of this amendment were able to get 56 votes, budget act rules required 60 votes for approval. The sponsors will now be looking for another way to advance their idea.

SINK THE SINC

Hooray for Senator Pressler! During the Senate debate, the Senator authored an amendment to the budget reconciliation bill that was one of the few amendments adopted by the Senate. His proposal deleted a provision with the innocuous title of the Service Industry Noncompliance (SINC) initiative. We hope the conferees will agree with the Senate action, and drop the provision. The provision would generate only more paperwork for small business. Let us explain.

Currently, businesses that pay \$600 or more in a calendar year for services from "any person" (the service provider in IRS jargon) are required to file information returns with the IRS and the service provider (Form 1099-MISC) giving the provider's name, taxpayer identification number (TIN), and amount paid. Under SINC, beginning in 1994, payments to corporations would no longer be exempted from this filing requirement, although the IRS could still exempt certain categories of corporations or payments.

Extending information reporting to corporate service providers would vastly expand the amount of recordkeeping and reporting. It would also magnify some existing problems that have been relatively unimportant until now. To cite a few: Clearer rules would be needed as to what constitutes reportable services, and how to separate the services portion of combined or unidentified payments; Payors and employees who buy services on their behalf, and are now reimbursed through fairly simple expense reports, would have to capture much more information from vendors, including whether the vendor was part of a larger company or was a franchisee using its name; For businesses operating from many locations, either each location would be allowed to issue 1099s (greatly multiplying the number of 1099s) or the

head office would have to aggregate payments from all locations (greatly aggravating the payor's recordkeeping burden). In short, a lot of aggravation and a lot of paperwork.

The IRS is likely to get little or no benefit from SINC for several reasons. First, the IRS does not efficiently use the one billion 1099s it already receives and is not far enough along in modernizing its computers to cope with hundreds of millions to billions more. Second, even if the IRS could consolidate all of the information returns it had received for a service provider, the IRS would not be able to reconcile the 1099s with the company's tax return. For the many corporations on accrual accounting or a non-calendar tax year, calendar year cash receipts have no connection to tax return data. Also, a company's gross receipts include income from sales of goods, services totaling less than \$600, and other items not subject to 1099 reporting. Thus, there is little reason to believe that service providers would become more compliant on the basis on 1099s they know are incomplete, inaccurate, and beyond the ability of the IRS to use.

Rather than sinking companies and the IRS under a mass of senseless documents, the IRS should make better use of the information it already receives; should tell Congress and service recipients and providers how it proposes to handle problems like those discussed above before reporting requirements are expanded; should also prove it is capable of handling the data from expanded reporting by conducting limited tests with selected groups of service recipients and providers before making the system universal.

(Our thanks to Kenneth Simonson (American Trucking Associations), Chairman of the SBLC Committee on Taxation, for this article.)

THE FLOOD SITUATION

Mr. GRASSLEY, Madam President, I hold in front of me yesterday's Des Moines Sunday Register. I think it has a picture that tells more about the flood situation and tells a story for those of us from rural America better than anything else that can be said.

Before I make some reference to this, let me say the Des Moines Register has for a long, long period of time been listed as one of the top 10 newspapers in the United States. So we are reading from stories of a staff that has a very, very good reputation.

This picture is of a farmer, a Mr. Richardson from Sidney, IA, which is down in the southwest corner of Iowa where the Missouri River and a smaller river called the East Nishnabotha, was out of its banks and flooding. This farmer is looking out over a field that contained part of his farming operation of 1,500 acres of corn and about 1,000 acres of soybeans. And it is all under water, he said, except for 150 acres of corn and about 40 acres of soybeans. When you are 32 years old, as this young fellow is—and my son has a farming operation, and he is 32 years old and has a young son like this young boy in the photo who is under 4 years of age. So that is the present generation of farmers, although the av-

erage age of farmers in my State is really 58 years of age. So this 32-year-old farmer is a very young farmer. But this is the future generation of farmers. From this disaster that they are looking at, not only a year's work has kind of gone down the drain, but it could be the future of this family and a lot of other families, as well.

I thought it would be helpful to us, as we are getting ready to debate—I think tomorrow—the disaster bill, just what the situation here is for some of these farmers. As they look to the damage that is done as a result of the flood, they must consider that there is probably greater damage on the horizon out there. As the subheadline says: "Crops are Puny, Behind Schedule." They are about 1 month behind schedule, which means that if we have a frost before the middle of October, even the crops that are growing today will not produce much grain; and what grain will be produced will be very poor quality.

Another subheadline says: "Farmers Unease is Watered by Floods and Fed by Fears of More Weather Problems." That weather problem tends to be more a fear of a potential frost.

Quoting:

During the dawn hours of July 23, Uwe Richardson and his family fled their farm in the rich bottomlands along the Missouri River, taking grain, equipment, furniture—anything they could haul away.

Now, as Richardson waits for the flooded rivers to recede, he's not so sure he even wants to return to see what remains of the crops that he tended.

"Most of it's totally gone," Richardson, 32, said last week as he tried to find chores to keep himself occupied at his temporary home, the farm of Darrel McAlexander.

"There's maybe 150 acres of corn left of 1,500 we planted, and you can't really see how good it's going to be. And the beans—there's probably 40 acres left of a thousand."

While Richardson's plight is extreme, it is hardly unique. Across the State, anxiety is growing as farmers realize the extent of the devastation wrought in every county by months of unending rain. It's not just the farmers with land under water who are in trouble; many others had to plant late, and their crops are puny, thin and weeks behind schedule.

And if crop yields are cut as much as some predict, the economic impact on Main Street could be significant.

Quoting Alan Tubbs, a banker and former chairman of the American Bankers Association, who says:

"I think it's too soon to predict the aggregate consequences, but it's clear the Iowa economy is not going to be the same in the future as it would have been."

Des Moines Register reporters fanned out across rural Iowa last week, talking with dozens of farmers, elevator operators, implement dealers, merchants bankers, and others connected with farm communities. Most Iowans said the outlook is bleak for as much as one-third of this year's crop, unless the weather is near perfect between now and the first frost.

"We need to get through October, and that's a real tall order," said Galen Zeman,

branch manager of the Co-op Grain and Products Company in Armstrong in northwest Iowa.

Last week's crop report, issued by Iowa Agricultural Statistics, showed 30 percent of the State's corn fields in poor or very poor condition and 51 percent in fair shape. Only 15 percent of the corn was showing tassels—nearly 70 percentage points behind the normal 83 percent.

State officials have estimated Iowa's crops have suffered nearly \$1 billion in damage so far this year, with the clock ticking as summer wanes and the first frost approaches.

Steve Smith, a farmer and pork producer from Ionia, said it takes 60 days for tasselling until corn is mature. "If we get a frost during the first or second week of September, like we have the past couple of years around here, there won't be much to combine," Smith said.

From the fence row, some corn and soybeans look deceptively healthy.

"The taller corn is hiding a lot of short corn that won't make anything," said Duane Moon, 63, a dairy farmer from Luana and Clayton County in northeast Iowa. "Even on the places where the field is tilled, the tile won't take the water. You've got 10 acres out of every 40 acres that's too wet."

From a plane, the picture is clearer. Robert Boeding, a northeast Iowa farmer-flier from Lawler in Chickasaw County, flew over much of Iowa on July 15, plotting the huge holes he saw in the middle of the corn fields across the State.

Where the crops were not growing, he has an assessment he gives.

I could read on and on, but I am not going to do so. I ask my colleagues if they want a really up-to-date analysis of what the situation is in one of the nine States that have been affected negatively by the flood, I wish they would look at the Des Moines Sunday Register for yesterday, August 1, 1993, and there are several pages in the front section that I could read or insert in the RECORD. I do not think I should spend the taxpayers' money to do that when it can be read directly from the paper.

But the point is, as we discuss the disaster aid bill that will be up, we are not only talking, as I referred here, about what happened to agriculture, the massive amount of loss in that area. We must also remember small businesses and thousands of people who have had their homes inundated with water, and what has to go into cleaning up and repairing those homes, what has to go into helping small businesses get started again. A lot of public infrastructure that has been damaged will have to be repaired. This all adds into the billions of dollars for the over 9- or 10-State area that has been affected. Right now, we are seeing, day after day, the situation in Missouri and southern Illinois, much like it was in Iowa prior to a week ago.

So I commend this latest information, which I think is a very good analysis of the situation, so that if any Members of this body have any doubts about the legitimacy of it, they will have an opportunity to read what the situation is.

I yield the floor.

Mr. BIDEN. Madam President, I ask unanimous consent to continue as in morning business.

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

Mr. BIDEN. Madam President, I thank the Senator from Iowa for calling to our attention the detail he has. The human side of this tragedy going on in the Midwest is the response of the American people from the east coast and the west coast, from the south and the north, who are not part of the Midwest dilemma. That is really what this country is all about.

I hope when we debate the disaster relief legislation tomorrow or the next day, whenever it is going to be, that we all keep in mind that one of the purposes of this country and the way we have always operated is to come to the aid of other people in the country who are in trouble. That is not limited just to natural disasters as a consequence of rain and flooding.

In my own State of Delaware right now, the Governor has asked that our counties be declared disaster areas because, irony of all ironies, while the Midwest is literally drowning and the Midwest farmers are in trouble, on the east coast, in Delaware—the largest industry in my State is agriculture, small as my State is, it is the largest industry—we have had this gosh awful heat wave that we had several weeks ago and a drought. As a consequence, the corn is not tasseled, the beans in the field are dying, and we are likely to have a terrible year.

I think that one of the good things—my mother, God bless her, always said out of something bad always comes something good—one of the good things that maybe comes out of this is that we remind ourselves as Americans we really are in this thing together.

I remember on the floor debating my distinguished former colleague from the State of Colorado, Senator Armstrong, not too many years ago about funding for a particular program that had to do with what would help primarily municipalities and large municipalities, funding for the mass transportation. The then President of the United States had said something to the effect—and I am paraphrasing—why should the woman from Albuquerque pay to subsidize a commuter in the city of Philadelphia going to work, and the debate related to that issue on Amtrak with my friend from Colorado.

I pointed out to him that until I became an adult I never had the opportunity to fly across this great country. I never will forget the first time I flew across the country. Flying over his State of Colorado, I noticed these great concentric circles in the ground and I did not know what they were. They looked arid. They looked like a plateau desert area, mountain desert, except for these great concentric circles. I

later learned from the steward on the airplane that they were great irrigation facilities, allowing the farmers in Colorado to farm.

It is because the woman in Philadelphia—going to work at 6:30 in the morning, getting on that mass transit, part of which is subsidized—is paying her tax dollars to dam the Colorado River and other rivers, allowing the multibillion dollar projects to provide water for that woman in Albuquerque, NM, or in Boulder, CO, or any other part of the State of Colorado to be able to not only irrigate their fields but literally be able to drink any water.

I tried to remind my colleague that I thought one of the purposes of this more perfect Union we sought to form a couple hundred years ago is to rely on the strengths of the other States to compensate for the temporary weaknesses of a particular State, whether it was a consequence of a natural disaster, or a consequence of other disasters.

I recall when the Mariel boat lift came to Florida, Senator Chiles—now Governor Chiles—stood on the floor and asked for help, and this body stood up and said, no, this is a Florida problem.

I do not know how it was a Florida problem when an entire flotilla left one country and landed on the nearest point of debarkation they could, which happened to be the State of Florida. Why that was not a national problem and was specifically a Florida problem?

So, as we debate this disaster relief, the overwhelming impetus we should have is to deal with this awful crisis that is facing homeowners, businesspersons, and farmers in that 10-State area in the Midwest that has been met with this 500-year phenomenon, that is so rare it only occurs once every 500 years. That is what I am told. That is our major focus.

While doing that, we should keep in mind there are other natural disasters that are inflicted upon States as a consequence of their locale, as a consequence of their geography, and consequence of many things beyond their control that make them American problems, not just Iowa problems or Delaware problems or Illinois problems.

I know that the officer presiding in the chair has been as adamant and as emotional and intellectually committed as the Senator from Iowa if something happened in the southern part of her State in particular, as a consequence of this weather.

I will cease now, but will suggest only to my colleagues, that as we look at these natural disasters. There are many natural disasters that are not a consequence of mother nature, that hit this Nation and hit regions of the country that put them at serious disadvantage, and although we may not be passing natural disaster relief legislation

in terms of dollars to help those areas of the country, there are programmatic initiatives and things which we should and must do to make sure that every American is given a shot.

Each of the regions of the country has a different strength and concomitant weakness, and the strength of this Nation has always been those parts of the country that are strongest in a certain area have compensated for those parts of the country that are weakest. Each of us, as I said, have our strengths and our weaknesses.

I would hope that next time we have a debate and, hopefully, we would not—I recall in the seventies the debate on bailing out New York City and hearing here on the floor of the U.S. Senate—that is how long I have been here—my colleagues, Democratic and Republican, who were not east coast or west coast Senators, ganging up and talking about how that is New York City's problem; that is New York City's problem.

The fact that most of the immigrants that come into the country land in New York City and do not leave, the fact that people flock to New York City that are well beyond the control of New York City, not New Yorkers, somehow that was viewed as only a New York problem and not a national problem.

We got the aid through, and New York City righted itself.

But whether it is a city struck by natural disaster or whether it is a rural community, the strength of this Nation has always been those who have at the time, give to those who do not have. And we should do it. We must meet whatever need is required to be met in the Midwest now. But when this is over, I hope we do not forget that it is not just the farmers of America; it is blacks and Hispanics in inner cities; it is people trapped in the deluge of despair as people who are, as a consequence of a hurricane or as a consequence of a Mariel boat lift or a consequence of a drought.

I plan on doing all I can to help my colleagues in the Midwest, see to it their constituents are given a fighting chance. And I hope we remember that when we come to other natural disasters that, in fact, are inflicted upon parts of this country that may not be inflicted by mother nature but may be inflicted as a consequence of other much more complicated factors.

So I thank the Chair.

THE PASSING OF CONGRESSMAN PAUL HENRY

Mr. HATFIELD. Madam President, I rise with a sense of deep sorrow to pay tribute to my friend and colleague, Congressman PAUL HENRY of Michigan, who passed away Saturday. Congressman HENRY had waged a valiant struggle against brain cancer since being diagnosed with that deadly condition

over 8 month ago. I know I share the feelings of the many Members of this body who knew PAUL HENRY in expressing my regret and in wishing his family and staff my heartfelt sympathy for their loss.

PAUL HENRY was a devoted husband and father. Anyone who worked with him knew of his tremendous love for his wife, Karen, and his three children, Kara, Jordan, and Megan. Nothing was more important to him than his family. This he certainly absorbed from his mother, Helga, and his father Prof. Carl F.H. Henry—a world renown and respected evangelical leader and editor of Christianity Today and the author of a number of books on theology. Their son was so talented and accomplished and they must have been so proud of everything he did. Our thoughts and prayer go to the entire Henry family.

PAUL HENRY viewed his life as a walk with Christ, and this healthy view of life drew people to him for fellowship and leadership. He integrated his well-defined faith in—and commitment to—Christ with understanding and compassion. Throughout his lifetime, he demonstrated a sense of personal balance, confidence, and humor that is the hallmark of truly great public servants.

In 1976, I traveled to Grand Rapids, MI, to speak to a group of students and faculty at Calvin College. While there I saw Prof. PAUL HENRY, a very thoughtful and energetic young professor. Professor HENRY was one of the more popular professors at the college, largely due to his innate ability to evoke from his students constructive and thoughtful dialog on almost any issue or topic—controversial or not. He sought to bring people together and often did. This is a rare gift, and PAUL HENRY shared it with so many others throughout his lifetime. After serving the State of Michigan for over a decade as a member of the State board of education and as a State Legislator, PAUL HENRY was elected to Congress in 1984, filling the seat once held by President Gerald Ford. He served with distinction as a member of the House Committee on Education and Labor, the Committee on Science, Space, and Technology, and the Select Committee on Aging.

Congressman HENRY and I shared a common interest on a number of issues. As former educators, we shared a lifelong commitment to education, including an increased emphasis on math and science education. We worked most closely together on a recycling measure known as the bottle bill, which we introduced for a number of years as companion measures in Congress. On this issue, there was no more effective advocate than PAUL HENRY. This was again vividly demonstrated to me and many others last September when Congressman HENRY graciously agreed to testify before the Energy and Natural Resources Committee's hearing on the

bottle bill. His eloquence and intellect greatly focused and advanced discussion on the issue and his absence will leave an immense void for this and so many other issues.

Again, I join many others in expressing my grief at the passing of a friend and colleague, PAUL HENRY. For the Henry family, members of this committed staff, the citizens of Michigan, and those who served with him in Congress, the passing PAUL HENRY is a chance to celebrate the life and accomplishments of a devoted family man, deeply committed public servant, and an inspirational man of God, I know few I more deeply admired in my 43 years of public office than my colleague and brother PAUL HENRY. He will be missed.

I yield the floor.

AUTHORITY FOR COMMITTEES TO FILE

Mr. BIDEN. Mr. President, I ask unanimous consent that, during the recess or adjournment of the Senate, the Senate committees may file committee reported Legislative and Executive Calendar business on Tuesday, August 24, 1993, from 11 a.m. to 3 p.m.

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

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 102-521, appoints the following individuals to the Commission on Child and Family Welfare: Mary Cathcart of Maine; Kathryn Monaghan Ainsworth of Maine; Marna S. Tucker of Maryland; and Nancy Duff Campbell of the District of Columbia.

APPOINTMENT OF THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the majority leader, pursuant to Public Law 102-325, the appointment of the following individuals to the National Commission on Independent Higher Education: John V. Hartung of Iowa, and Dorothy Moore of Maine.

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

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

MESSAGES FROM THE PRESIDENT

A message from the President of the United States was communicated to

the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO IRAQ—MESSAGE FROM THE PRESIDENT—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of February 16, 1993, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq), then or thereafter located in the United States or within the possession or control of a U.S. person. That order also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exportation of goods, services, and technology from the United States to Iraq. The order prohibited travel-related transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. U.S. persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property) were continued and augmented on August 9, 1990, by Executive Order No. 12724, which was issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

Executive Order No. 12817 was issued on October 21, 1992, to implement in the United States measures adopted in United Nations Security Council Resolution 778 of October 2, 1992. Resolution 778 requires U.N. member states temporarily to transfer to a U.N. escrow account up to \$200 million apiece in Iraqi oil sale proceeds paid by purchasers

after the imposition of U.N. sanctions on Iraq. These funds finance Iraq's obligations for U.N. activities with respect to Iraq, including expenses to verify Iraqi weapons destruction, and to provide humanitarian assistance in Iraq on a nonpartisan basis. A portion of the escrowed funds will also fund the activities of the U.N. Compensation Commission in Geneva, which will handle claims from victims of the Iraqi invasion of Kuwait. The funds placed in the escrow account are to be returned, with interest, to the member states that transferred them to the United Nations, as funds are received from future sales of Iraqi oil authorized by the United Nations Security Council. No member state is required to fund more than half of the total contributions to the escrow account.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Orders Nos. 12724 and 12817 (the "Executive Orders"). The report covers events from February 2, 1993, through August 1, 1993.

1. There have been no amendments to the Iraqi Sanctions Regulations during the reporting period.

2. Investigations of possible violations of the Iraqi sanctions continue to be pursued and appropriate enforcement actions taken. These are intended to deter future activities in violation of the sanctions. Additional civil penalty notices were prepared during the reporting period for violations of the International Emergency Economic Powers Act and Iraqi Sanctions Regulations with respect to transactions involving Iraq.

3. Investigation also continues into the roles played by various individuals and firms outside Iraq in the Iraqi government procurement network. These investigations may lead to additions to the Office of Foreign Assets Control's listing of individuals and organizations determined to be Specially Designated Nationals of the Government of Iraq.

4. Pursuant to Executive Order No. 12817 implementing United Nations Security Council Resolution 778, on October 26, 1992, the Office of Foreign Assets Control directed the Federal Reserve Bank of New York to establish a blocked account for receipt of certain post-August 6, 1990, Iraqi oil sales proceeds, and to hold, invest, and transfer these funds as required by the order. On May 18, 1993, following the payment of \$1,492,537.30 by the Government of the United Kingdom to a special United Nations-controlled account, entitled United Nations Security Council Resolution 778 Escrow Account, the Federal Reserve Bank of New York was directed to transfer a corresponding amount of \$1,492,537.30 from the blocked account it holds to the United Nations-controlled account. Future

transfers from the blocked Federal Reserve Bank of New York account will be made on a matching basis up to the \$200 million for which the United States is potentially obligated pursuant to United Nations Security Council Resolution 778.

5. Since the last report, there have been developments in two cases filed against the Government of Iraq. Another ruling was issued in *Consarc Corporation v. Iraqi Ministry of Industry and Minerals et al.*, No. 90-2269 (D.D.C., March 9, 1993), which arose out of a contract for the sale of furnaces by plaintiff to the Iraqi Ministry of Industry and Minerals, an Iraqi governmental entity. In connection with the contract, the Iraqi defendants opened an irrevocable letter of credit with an Iraqi bank in favor of Consarc, which was advised by Pittsburgh National Bank, with the Bank of New York entering into a confirmed reimbursement agreement with the advising bank. Funds were set aside at the Bank of New York, in an account of the Iraqi bank, for reimbursement of the Bank of New York if Pittsburgh National Bank made a payment to Consarc on the letter of credit and sought reimbursement from the Bank of New York. Consarc received a down payment from the Iraqi Ministry of Industry and Minerals and substantially manufactured the furnaces. No goods were shipped prior to imposition of sanctions on August 2, 1990, and the United States asserted that the funds on deposit in the Iraqi bank account at the Bank of New York, as well as the furnaces manufactured for the Iraqi government or the process of any sale of those furnaces to third parties, were blocked. The district court ruled on December 29, 1992, that the furnaces or their sales proceeds were properly blocked pursuant to the declaration of the national emergency and blocking of Iraqi government property interests. However, according to the court, due to fraud on the part of the Ministry of Industry and Minerals in concluding the sales contract, the funds on deposit in an Iraqi bank account at the Bank of New York were not the property of the Government of Iraq. The court ordered the Office of Foreign Assets Control to unblock these funds, and required Consarc to block the proceeds from the sale of one furnace and to hold the remaining furnace as blocked property. On January 27, 1993, the Office of Foreign Assets Control complied with the court's order and licensed the unblocking of \$6.4 million plus interest to Consarc. On March 9, 1993, the court affirmed its ruling in response to Consarc's motion to clarify the December 29 order and the Office of Foreign Assets Control's motion to correct the judgment to conform to the December 29 opinion. The Office of Foreign Assets Control and Consarc have each appealed the district court's ruling.

In *Brewer v. The Socialist People's Republic of Iraq*, No. 91-5325 (D.C. Cir., 1993) the United States Court of Appeals for the District of Columbia Circuit affirmed the district court's ruling denying appellant's motion to attach U.S.-located assets of the Government of Iraq and its state tourism organization. Following the holding of *Dames & Moore v. Regan*, 453 U.S. 654 (1981), the court upheld the power of the President to freeze foreign assets and prevent their attachment by private litigants in times of national emergency.

6. The Office of Foreign Assets Control has issued a total of 391 specific licenses regarding transactions pertaining to Iraq or Iraqi assets since August 1990. Since my last report, 54 specific licenses have been issued. Licenses were issued for transactions such as the filing of legal actions against Iraqi governmental entities, for legal representation of Iraq, and the exportation to Iraq of donated medicine, medical supplies, and food intended for humanitarian relief purposes.

7. The expenses incurred by the Federal Government in the 6-month period from February 2, 1993, through August 1, 1993, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iraq are estimated at about \$2.5 million, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Assistant Secretary for Enforcement, and the Office of the General Counsel), the Department of State (particularly the Bureau of Economic and Business Affairs, the Bureau of Near East and South Asian Affairs, the Bureau of International Organizations, and the Office of the Legal Adviser), and the Department of Transportation (particularly the U.S. Coast Guard).

8. The United States imposed economic sanctions on Iraq in response to Iraq's invasion and illegal occupation of Kuwait, a clear act of brutal aggression. The United States, together with the international community, is maintaining economic sanctions against Iraq because the Iraqi regime has failed to comply fully with United Nations Security Council resolutions, including those calling for the elimination of Iraqi weapons of mass destruction, the inviolability of the Iraq-Kuwait boundary, the release of Kuwaiti and other third country nationals, compensation for victims of Iraqi aggression, long-term monitoring of weapons of mass destruction capabilities, and the return of Kuwaiti assets stolen during Iraq's illegal occupation of Kuwait. The U.N. sanctions remain in place; the United States will continue to enforce those sanctions under domestic authority.

The Baghdad government continued to violate basic human rights by repressing the Iraqi civilian population and depriving it of humanitarian assistance. The United Nations Security Council passed resolutions that permit Iraq to sell \$1.6 billion of oil under U.N. auspices to fund the provision of food, medicine, and other humanitarian supplies to the people of Iraq. Under the U.N. resolutions, the equitable distribution within Iraq of this assistance would be supervised and monitored by the United Nations. The Iraqi regime so far has refused to accept these resolutions and has thereby chosen to perpetuate the suffering of its civilian population. Discussions on implementing these resolutions resumed at the United Nations on July 7, 1993.

The policies and actions of the Saddam Hussein regime continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, as well as to regional peace and security. Because of Iraq's failure to comply fully with United Nations Security Council resolutions, the United States will therefore continue to apply economic sanctions to deter Iraq from threatening peace and stability in the region, and I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

THE WHITE HOUSE, August 2, 1993.

MESSAGES FROM THE HOUSE

At 3:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 33. A concurrent resolution to waive the provisions of the Legislative Reorganization Act of 1970 which require the adjournment of the House and Senate by July 31.

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

H.R. 2010. An act to amend the National and Community Service Act of 1990 to establish a Corporation for National Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such service, and for other purposes;

H.R. 2150. An act to authorize appropriations for fiscal year 1994 for the United States Coast Guard, and for other purposes; and

H.R. 2200. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes.

The message further announced that the House has agreed to the amendments of the Senate to the bill (H.R. 798) to amend title 38, United States

Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992.

The message further announced that the House has agreed to the following resolution:

H. Res. 232. A resolution relative to the death of the Honorable Paul B. Henry, a Representative from the State of Michigan.

At 6 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment.

S. 1295. An act to amend the Rehabilitation Act of 1973 and the Education of the Deaf Act of 1986 to make technical and conforming amendments to the act, and for other purposes.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2493) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1994, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DURBIN, Mr. WHITTEN, Ms. KAPTUR, Mr. THORTON, Ms. DELAURO, Mr. PETERSON of Florida, Mr. PASTOR, Mr. SMITH of Iowa, Mr. NATCHER, Mr. SKEEN, Mr. MYERS of Indiana, Mrs. VUCANOVICH, Mr. WALSH, and Mr. MCDADE as managers of the conference on the part of the House.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 2150. An act to authorize appropriations for fiscal year 1994 for the United States Coast Guard, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 2200. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first time and placed on the Calendar:

H.R. 2010. An act to amend the National and Community Service Act of 1990 to establish a Corporation for National Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such services, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1313. A communication from the Principal Deputy Comptroller, Department of Defense, transmitting, pursuant to law, a report relative to violations of the Antideficiency Act; to the Committee on Appropriations.

EC-1314. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on a soil conservation service plan for the Doyle Creek Watershed of Kansas; to the Committee on Environment and Public Works.

EC-1315. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on a soil conservation service plan for the McCoy Wash Watershed of California; to the Committee on Environment and Public Works.

EC-1316. A communication from the Principal Deputy Comptroller, Department of Defense, transmitting, pursuant to law, a report relative to the proposed allocation of funds for the Republic of Belarus; to the Committee on Armed Services.

EC-1317. A communication from the Principal Deputy Comptroller, Department of Defense, transmitting, pursuant to law, identification of a funding source for aid the Russian Federation; to the Committee on Armed Services.

EC-1318. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a draft of proposed legislation to reform requirements for the disposition of multifamily property owned by the Secretary of Housing and Urban Development, enhance program flexibility, authorize a program to combat crime, and for other purposes; to the Committee on Banking, Housing and Urban Affairs.

EC-1319. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a report relative to shrimp harvesting in Honduras; to the Committee on Commerce, Science and Transportation.

EC-1320. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to foreign shipbuilding subsidies; to the Committee on Commerce, Science and Transportation.

EC-1321. A communication from the Commissioner of the Bureau of Reclamation, Department of the Interior, transmitting, pursuant to law, a report relative to modifications of the Cold Springs Dam; to the Committee on Energy and Natural Resources.

EC-1322. A communication from the Director of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the gas and oil resources on the Outer Continental Shelf; to the Committee on Energy and Natural Resources.

EC-1323. A communication from the Chairman of the International Trade Commission, transmitting, pursuant to law, a report relative to the operation of the United States Trade Agreements Program; to the Committee on Finance.

EC-1324. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-59 adopted by the Council on July 20, 1993; to the Committee on Governmental Affairs.

EC-1325. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-60 adopted by the Council on July 21, 1993; to the Committee on Governmental Affairs.

EC-1326. A communication from the Vice President of the Farm Credit Bank of Texas, transmitting, pursuant to law, the annual report and audited financial statement for the Bank's pension plan for the year ended December 31, 1992; to the Committee on Governmental Affairs.

EC-1327. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to the Coast Guard's retirement system; to the Committee on Governmental Affairs.

EC-1328. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on maltreatment of children in alcohol abusing families; to the Committee on Labor and Human Resources.

EC-1329. A communication from the Acting Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Securities Investor Protection Corporation; to the Committee on Banking, Housing and Urban Affairs.

EC-1330. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to the uniformity of transit half-fare policies; to the Committee on Commerce, Science and Transportation.

EC-1331. A communication from the Deputy Associate Director for Compliance of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to refunds of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1332. A communication from the Acting Assistant Secretary for Fossil Energy, Department of Energy, transmitting, pursuant to law, the environmental report of the Strategic Petroleum Reserve for calendar year 1992; to the Committee on Energy and Natural Resources.

EC-1333. A communication from the Acting Energy Information Administrator, Department of Energy, transmitting, pursuant to law, the annual energy review of the Energy Information Administration for calendar year 1992; to the Committee on Energy and Natural Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-228. A concurrent resolution adopted by the Legislature of the State of Hawaii to the Committee on Indian Affairs.

HOUSE CONCURRENT RESOLUTION 213

"Whereas, the nation of Hawaii became a kingdom, later unified by Kamehameha I in 1810 which was recognized and duly respected by other nations and kingdoms of the world; and

"Whereas, in 1887, King Kalakaua was coerced under threat of military force to sign the so called "Bayonet Constitution" that made him a ceremonial figurehead; and

"Whereas, on January 17, 1893, the United States government through its military forces, under the authority of U.S. Minister John L. Stevens, aided in the overthrow of the constitutional Hawaiian government headed by Queen Liliuokalani, and helped to

establish a Provisional Government, which took full possession of all government functions and buildings of the Hawaiian Islands; and

"Whereas, on December 18, 1893, President Grover Cleveland submitted to the Congress of the United States a full report that condemned the role of the American minister and the U.S. Marines in the overthrow of the Hawaiian monarchy and called for the restoration of the Hawaiian monarchy; and

"Whereas, in 1895, Queen Liliuokalani was arrested by the Republic of Hawaii, tried and found guilty of misprision of treason, was sentenced to five years at hard labor, fined \$5,000, held prisoner at Iolani Palace for eight months, later held under house arrest at Washington Place for five months, and restricted to the island of Oahu for another eight months; and

"Whereas, in 1898, Congress ignored President Cleveland's previous request and annexed the Hawaiian Islands through the "Newlands Resolution", which was legally questioned as to whether the U.S. Congress had the authority to admit territory into the union by joint resolution, for it is not specified that Congress had the power to acquire territory through any means other than conquest or treaty; and

"Whereas, the actions taken by the United States in the illegal invasion of 1893 are the basis for legal claims for the restoration of human, civil, property, and sovereign rights of Hawaii's indigenous people; and

"Whereas, the seriousness and implications of the unlawful overthrow has yet to be adequately addressed and remedied for over a century of human interaction in Hawaii; and

"Whereas, the year 1993 holds special significance for Hawaii for it marks the one hundred year anniversary of the illegal overthrow of the independent nation of Hawaii with the participation of the United States military and diplomatic representatives; and

"Whereas, such loss of independence and self-determination of the indigenous Hawaiian people remains an important cultural and political factor today; and

"Whereas, there is increasing discussion and debate in Hawaii and in the Congress of the United States of the adverse consequences of such overt acts of military aggression against a peaceful, independent nation, and to the citizens and descendants of that nation today; and

"Whereas, the even broader issue of equality for all people, irrespective of race, to exercise the right of self-determination in their homelands should be recognized; and

"Whereas, the full range of consideration of Hawaii's peoples' rights and freedoms must be completely explored in order to bring about harmony within Hawaii's society; Now, therefore, be it

Resolved by the House of Representatives of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1993, the Senate concurring, That the Legislature declares that 1993 should serve Hawaii, our nation, and the world as a year of special reflection on the rights and dignities of the indigenous people of Hawaii; and be it further

Resolved, That the Legislature recommitments and reaffirms its efforts and support of indigenous Hawaiian's in their struggles to address the federal government's illegal and immoral wrongdoings committed against them; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Vice President of the United States, the Secretary of the Interior, the Speaker of the

United States House of Representatives, Hawaii's Congressional Delegation, and the Governor of the State of Hawaii."

POM-231. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Labor and Human Resources.

ASSEMBLY RESOLUTION NO. 134

"Whereas, Few industries have been as committed to community as the pharmaceutical companies of New Jersey; and

"Whereas, There are many examples of ways in which pharmaceutical companies have responded to the needs of the State; and

"Whereas, Hoffmann-LaRoche, Inc. has devised a concept to teach geometry through art and is bringing the method to teachers across the State; and

"Whereas, Johnson & Johnson has remained in New Brunswick in order to contribute to the vitality of an inner city; and

"Whereas, Warner-Lambert Company has adopted a low income neighborhood school and raised the educational attainments and hopes of the students at that school; and

"Whereas, Bristol-Myers Squibb Company has helped to feed the hungry and the homeless in motels in the U.S. Route 1 corridor; and

"Whereas, Schering-Plough Corporation has viewed culture and the arts as venues to unite communities and enrich the quality of life of neighborhood residents; and

"Whereas, CIBA-GEIGY Corporation has consistently run the largest Boy Scout food drive in the country; and

"Whereas, Sandoz Corporation has sponsored educational programs to help children better understand the aging process in senior citizens; and

"Whereas, Becton Dickinson & Company and Hoechst Celanese Corporation have targeted efforts to improve the lives of people suffering from diabetes; and

"Whereas, Merck & Company, Inc. has provided immunizations to children, supplied an inner-city medical van to bring medical help to underprivileged children and contributed to the building of a performing arts center in Newark; and

"Whereas, All of these examples are testimony to the fact that the pharmaceutical industry has been distinguished in its efforts to make New Jersey a better place in which to live and work; Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

"1. The Legislature of the State of New Jersey memorializes the Congress of the United States to take into consideration the valuable contributions made by the pharmaceutical industry in the State in the field of corporate philanthropy when it deliberates health care reform and considers cost containment measures and possible price controls on pharmaceuticals.

"2. A duly authenticated copy of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk of the General Assembly, shall be transmitted to the presiding officers of the United States Senate and the House of Representatives, and to each member of Congress elected from this State."

POM-232. A joint resolution adopted by the General Assembly of the State of Illinois; to the Committee on Labor and Human Resources.

HOUSE JOINT RESOLUTION NO. 6

"Whereas, more than 150 drugs which may be of benefit to women are currently being

investigated by the U.S. Food and Drug Administration, and many have been under investigation for as long as ten years; and

"Whereas, we recognize the need for thorough testing, but believe that unnecessary delays and the low priority often given to women's health care problems have resulted in much suffering that could be avoided by expediting the approval process: Therefore, be it

Resolved, by the House of Representatives of the Eighty-Eighth General Assembly of the State of Illinois, the Senate concurring herein, That we urge the U.S. Food and Drug Administration to expedite the approval of drugs that address women's health problems; and be it further

Resolved, That suitable copies of this preamble and resolution be presented to the Illinois Congressional Delegation and the U.S. Food and Drug Administration."

POM-233. A resolution adopted by the American Bar Association, relative to the Soldiers' and Sailors' Civil Relief Act; to the Committee on Veterans' Affairs.

POM-234. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Energy and Natural Resources.

"SENATE JOINT RESOLUTION NO. 27

"Whereas, the State of Nevada has a strong moral claim upon the public land retained by the Federal Government within Nevada's borders; and

"Whereas, on October 31, 1864, the Territory of Nevada was admitted to statehood on the condition that it forever disclaim all right and title to unappropriated public land within its boundaries; and

"Whereas, Nevada received the least amount of land, 2,572,478 acres, and the smallest percentage of its total area, 3.9 percent, of the land grant states in the Far West admitted after 1864, while states of comparable location and soil, including Arizona, New Mexico and Utah, received approximately 11 percent of their total area in federal land grants; and

"Whereas, the State of Texas, when admitted to the Union in 1845, retained ownership of all unappropriated land within its borders; and

"Whereas, the federal holdings in the State of Nevada constitute 86.7 percent of the area of the state, and in Esmeralda, Lincoln, Mineral, Nye and White Pine counties the Federal Government controls from 97 to 99 percent of the land; and

"Whereas, the Federal jurisdiction over the public domain is shared among several federal agencies or departments which causes problems concerning the proper management of the land and disrupts the normal relationship between a state, its residents and its property; and

"Whereas, the intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states; and

"Whereas, the exercise of dominion and control of the public lands within the State of Nevada by the United States works a severe, continuous and debilitating hardship upon the people of the State of Nevada; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That the ordinance of the constitution of the State of Nevada be amended to read as follows:

"In obedience to the requirements of an act of the Congress of the United States, ap-

proved March twenty-first, A.D. eighteen hundred and sixty-four, to enable the people of Nevada to form a constitution and state government, this convention, elected and convened in obedience to said enabling act, do ordain as follows, and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

"First. That there shall be in this state neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

"Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said shall ever be molested, in person or property, on account of his or her mode of religious worship.

"Third. That the people inhabiting said territory do agree and declare, that [they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that] lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States, unless otherwise provided by the Congress of the United States. And be it further

Resolved, That the Legislature of the State of Nevada hereby urges the Congress of the United States to consent to the amendment of the ordinance of the Nevada constitution to remove the disclaimer concerning the right of the Federal Government to sole and entire disposition of the unappropriated public lands in Nevada; and be it further

Resolved, That, upon approval and ratification of the amendment proposed by this resolution by the people of the State of Nevada, copies of this resolution be prepared and transmitted by the Secretary of the Senate to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage and approval, except that, notwithstanding any other provision of law, the proposed amendment to the ordinance of the constitution of the State of Nevada, if approved and ratified by the people of the State of Nevada, does not become effective until the Congress of the United States consents to the amendment or upon a legal determination that such consent is not necessary."

POM-235. A resolution adopted by the House of the Northern Marianas Commonwealth Legislature; to the Committee on Energy and Natural Resources.

"H.R. No. 8-103

"Whereas, our self government has evolved through formative years under the administration of the United States Navy, the Trust Territory Government and the Congress of Micronesia; and

"Remembering that the aspirations of the people of the Northern Marianas for an affirmative political status led us toward a closer political association with the United States; and

"Evidenced on March 13, 1971 when President Richard M. Nixon appointed Ambassador Franklin Haydn Williams, the President of the Asia Foundation, as his personal

representative for political status negotiations with the Marianas Political Status Commission; and

"Diligently laboring through five rounds of negotiations between 1972 and 1975, Ambassador F. Haydn Williams worked arduously as Chairman of the United States' delegation with the Marianas Political Status Commission to accordantly create the document that would ultimately embody the political desires of the people of the Northern Mariana Islands; and

"Whereas, their cooperative efforts came to fruition in the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America on February 15, 1975; and

"Subsequently the people of the Northern Marianas gave their express endorsement of the Covenant by the unanimous approval of the Mariana District Legislature and the overwhelming approval by the public of the plebiscite of June 17, 1975;

"Resulting in Presidential approval by Gerald Ford of the Covenant on March 24, 1976 which effectuated the achievement of Ambassador F. Haydn Williams and the Marianas Political Status Commission into U.S. Public Law 94-241: 90 Stat. 263; and

"Whereas, Ambassador F. Haydn Williams has since continued to support the political endeavors of the Commonwealth through consultations as recently evidenced by his visit to our islands, during which he presented his valuable knowledge and approving opinion to the House Committee on Federal and Foreign Relations on the establishment of a Delegate from the Northern Mariana Islands to the United States Congress: Now, therefore, be it

Resolved, by the House of Representatives, Eight Northern Marianas Commonwealth Legislature, That the House expresses its heartfelt appreciation to Ambassador Franklin Haydn Williams for his dedication and assistance to the people of the Northern Mariana Islands in the realization of their political destiny; and be it further

Resolved, The the Speaker of the House shall certify and the House Clerk shall attest to the adoption of this resolution and thereafter transmit copies to: The Honorable Bill Clinton, President of the United States; Ambassador Franklin Haydn Williams; the Honorable Lorenzo I. De Leon Guerrero, Governor of the Commonwealth of the Northern Mariana Islands; the Honorable Thomas Foley, Speaker of the U.S. House of Representatives; the Honorable Richard Gephardt, Majority Leader of the U.S. House of Representatives; the Honorable Robert H. Michel, Minority Leader of the U.S. House of Representatives; the Honorable George Miller, U.S. House of Representatives; the Honorable Don Young, U.S. House of Representatives; the Honorable Ron De Lugo, U.S. House of Representatives; the Honorable Elton Gallegly, U.S. House of Representatives; the Honorable Eni F.H. Faleomavaega, U.S. House of Representatives; the Honorable Eleanor Holmes Horton, U.S. House of Representatives; the Honorable Carlos Romero-Barcelo, U.S. House of Representatives; the Honorable Robert Underwood, U.S. House of Representatives; the Honorable Al Gore, Vice President of the United States and President of the U.S. Senate; the Honorable George Mitchell, Majority Leader of the U.S. Senate; the Honorable Robert Dole, Minority Leader of the U.S. Senate; the Honorable J. Bennet Johnston, U.S. Senate; the Honorable Malcolm Wallop, U.S. Senate; the Honorable Bruce Babbitt, Secretary of the

U.S. Department of the Interior; and the Honorable Leslie M. Turner, Assistant Secretary Designee for Territorial and International Affairs."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services, without amendment:

S. 1337. An original bill to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 1338. An original bill to authorize appropriations for fiscal year 1994 for military construction, and for other purposes.

S. 1339. An original bill to authorize appropriations for fiscal year 1994 for defense activities of the Department of Energy, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committee were submitted:

By Mr. PELL, from the Committee on Foreign Relations: Treaty Doc. 102-37, Treaty on Open Skies, (Exec. Report 103-5).

RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION SUBMITTED BY THE COMMITTEE ON FOREIGN RELATIONS

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty on Open Skies signed at Helsinki on March 24, 1992, including annexes on Quotas and maximum Flight Distances; Information on Sensors, with an Appendix on Annotation of Data Collected During an Observation Flight; Information on Observation Aircraft; Certification of Observation Aircraft and Sensors, with an Appendix on Methodologies for the Verification of the Performance of Sensors Installed on an Observation Aircraft; Procedures for Arrivals and Departures, with an appendix on Designation of Sites; Pre-Flight Inspections and Demonstration Flights; Flight Monitors, Flight Representatives, and Representatives; Co-ordination of Planned Observation Flights; Information on Airspace and Flights in Hazardous Airspace; Montreux Convention; Information on Film Processors, Duplicators and Photographic Films, and Procedures for Monitoring the Processing of Photographic Film; and Open Skies Consultative Commission (all transmitted within Treaty Doc. 102-37); all such documents being integral parts of and collectively referred to as the "Open Skies Treaty", subject to the following:

(a) **CONDITIONS.**—The Senate's advice and consent to the ratification of the Open Skies Treaty is subject to the following conditions, which shall be binding upon the President:

(1) **CHANGES TO SENSORS.**—In the event that a State Party or States Parties seek to obtain agreement, within the framework of the Open Skies Consultative Commission in accordance with Article IV, paragraph 3, and Article X, paragraph 5, of the Open Skies Treaty, to the introduction of additional categories of sensors, or to additions to the capabilities of existing sensors provided for pursuant to the Treaty, as an improvement to the viability and effectiveness of the Treaty not requiring an amendment to the Treaty, and the United States intends to

agree to such proposed improvement, the President—

(A) shall provide prompt notification to the President of the Senate of each such proposed improvement, to include an analysis of the legal, cost, and national security implications of such proposed improvement; and

(B) shall not provide United States agreement to each such proposed improvement, or otherwise permit adoption of each such proposed improvement by consensus within the framework of the Open Skies Consultative Commission, until at least 30 days have elapsed from the date of notification to the Senate of the intention of the President to agree to such proposed improvement.

(2) **NUMBER OF UNITED STATES OBSERVATION AIRCRAFT.**—The Senate finds that United States interests may not require the utilization of the full quota of allowed observation flights or the procurement of more than one or two observation aircraft. Accordingly, within 60 days following completion of the first year after entry into force of the Open Skies Treaty, the President shall submit to the Senate a report setting forth:

(A) an analysis of the first year of operation of the Treaty, highlighting any ambiguities, differences, or problems that arose in the course of implementation, as well as any benefits that have accrued to the United States by its participation in the Open Skies regime;

(B) a determination of the estimated number of observation flights to be conducted annually by the United States for the duration of the Treaty; and

(C) an assessment of the number of United States observation aircraft required to carry out the observation flights described in subparagraph (B) above, taking into consideration the potential utilization of non-United States aircraft.

(b) **DECLARATION.**—The Senate's advice and consent to ratification of the Open Skies Treaty is subject to the following declaration, which expresses the intent of the Senate:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the Resolution of Ratification with respect to the INF Treaty, approved by the Senate on May 27, 1988.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. NUNN:

S. 1337. An original bill to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

S. 1338. An original bill to authorize appropriations for fiscal year 1994 for military construction, and for other purposes; from the Committee on Armed Services; placed on the calendar.

S. 1339. An original bill to authorize appropriations for fiscal year 1994 for defense activities of the Department of Energy, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. BINGAMAN:

S. 1340. A bill to establish a National Community Garden Grant Program to promote

the prevention and elimination of urban blight and to meet community developmental needs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LAUTENBERG:

S.J. Res. 118. A joint resolution to designate the week of October 17, 1993, through October 23, 1993, as "National Radon Action Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 1340. A bill to establish a National Community Garden Grant Program to promote the prevention and elimination of urban blight and to meet community developmental needs, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

NATIONAL COMMUNITY GARDEN GRANT PROGRAM ACT OF 1993

Mr. BINGAMAN. Mr. President, I rise today to offer legislation to help community gardening projects. Community gardens programs have proven important tools in bringing together diverse groups of people. They contribute to the rejuvenation of our inner cities, the knowledge of our students, and, in some cases, the nutrition of our citizens.

Unfortunately, the Federal Government is not doing all that is possible to help these important projects. For years we have had an urban gardening program under the auspices of the cooperative extension service in the Department of Agriculture. Although this program has provided support for urban garden projects, we do not have adequate data on garden projects receiving Federal funding from other sources, including block grant programs. We also do not seem to have a systematic method of allowing community gardens access to surplus Federal property.

My legislation addresses each of these issues. It would establish a Community Garden Grant Program, authorized to grant 100 community gardening projects up to \$20,000, with a 75-percent non-Federal match. It also directs the Secretary of Agriculture to collect data on other Federal support of community gardening efforts. Finally, it makes clear that community gardens are suitable recipients of surplus Federal property. It is my hope that this modest proposal to solidify Federal support for community gardens will help improve communities across the Nation.

I ask unanimous consent that the full text of the National Community Garden Grant Program Act of 1993 be printed in the RECORD following this statement.

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

S. 1340

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Community Garden Grant Program Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—
(1) in communities across the United States there are thousands of acres of vacant lots, the number of which is rapidly increasing;

(2) these vacant lots contribute to the deterioration of neighborhoods and engender feelings of hopelessness among residents and community leaders; and

(3) a National Community Garden Grant Program will aid in the prevention and elimination of urban blight by beautifying neighborhoods, developing communities and community leadership, and increasing nutritional awareness and gardening skills.

(b) PURPOSE.—The purpose of this Act is to create a National Community Garden Grant Program, which will be a national partnership of the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Administrator of General Services, citizens, private organizations, and representatives of State and local agencies from all parts of the United States, for the promotion of community gardens.

SEC. 3. DEFINITIONS.

As used in this Act (unless the context otherwise requires):

(1) COMMUNITY GARDEN PROGRAM.—The term "community garden program" means a gardening program that incorporates 1 or more of the following elements:

(A) Methods of gardening that promote improved nutrition and nutrition education.

(B) Gardening education.

(C) Community beautification.

(2) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 4. NATIONAL COMMUNITY GARDEN GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary shall award grants to eligible applicants to conduct community garden programs in accordance with this Act.

(2) ELIGIBLE APPLICANTS.—For purposes of paragraph (1), an eligible applicant for a grant under this Act is a unit of general local government or a nonprofit organization that is, or is capable of, carrying out a community garden program in accordance with this Act.

(3) MAXIMUM AMOUNT AND NUMBER.—The Secretary shall award up to 100 grants, each of which may not exceed \$20,000.

(4) FEDERAL, STATE, AND LOCAL CONTRIBUTIONS.—

(A) IN GENERAL.—The Federal share attributable to this section of the cost of carrying out a program for which a grant is made under this section shall be 25 percent.

(B) CALCULATION.—In providing for the remaining share of the cost of carrying out such a program, each grantee under this section—

(i) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(ii) may provide for such share through State sources, local sources, or Federal sources (other than funds made available under this section).

(5) DISTRIBUTION.—The Secretary shall award grants in a manner that reflects the geographical diversity of the United States, to the maximum extent practicable.

(6) SET-ASIDE.—The Secretary shall allocate at least 20 percent of the grant funds made available under this section to grantees located in communities with populations not exceeding 50,000 inhabitants.

(b) APPLICATIONS.—

(1) IN GENERAL.—The Secretary, in conjunction with the Secretary of the Department of Health and Human Services and the Secretary of Housing and Urban Development, shall develop selection criteria and application procedures consistent with the purposes of this Act.

(2) FACTORS.—In selecting grantees, at a minimum, the Secretary shall consider the following criteria:

(A) The extent to which the applicant will maximize the use of public-private partnerships and available surplus property.

(B) The extent to which the applicant will target minority, underserved, and high-risk populations.

(C) The likelihood of the applicant developing a sustainable community gardening program.

(3) CERTIFICATION OF ELIGIBILITY.—The Secretary shall certify the eligibility of each grantee.

(4) OTHER FUNDS.—Funds from other sources may be used by a grantee in conjunction with funds made available under this Act. This Act shall not affect any guidelines governing the use of other funds.

SEC. 5. DATA COLLECTION.

(a) IN GENERAL.—The Secretary shall establish a database to compile information submitted under subsection (b) and information related to the effectiveness of the National Community Garden Grant Program in each participating community.

(b) FEDERAL FUNDS.—Grantees shall furnish the Secretary with information regarding the amount of Federal funds received by each grantee, including funds from the Secretary, the Administrator of General Services, and the Secretary of Housing and Urban Development.

SEC. 6. DONATION OF PROPERTY.

A grantee under this Act may use surplus property obtained from the Administrator of General Services and the Secretary of Defense to carry out a community garden program.

SEC. 7. PROFITS FROM COMMUNITY GARDEN PROJECTS.

If a grantee derives a profit from the sale of a product produced by a community garden program that receives funds under this Act, the grantee shall use the profits only to further carry out such program.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, \$2,000,000 for fiscal year 1994 and \$2,000,000 for each of fiscal years 1996, 1997, and 1998.

By Mr. LAUTENBERG:

S.J. Res. 118. A joint resolution to designate the week of October 17, 1993, through October 23, 1993, as "National Radon Action Week"; to the Committee on the Judiciary.

NATIONAL RADON ACTION WEEK

Mr. LAUTENBERG. Mr. President, today I am introducing a Senate Joint Resolution which would designate the week of October 17, 1993, as "National Radon Action Week." The Senate passed similar resolution in each of the last 3 years.

Radon exposure poses a serious health risk to the people of our Nation. The EPA estimates that 14,000 people die annually from lung cancer caused

by exposure to radon. Fortunately, elevated radon levels can be reduced successfully at relatively low cost.

Testing in homes and schools and educating people about the risks associated with radon exposure are the first steps we can take to protect ourselves and our children from the harmful effects of radon. My resolution calls for the establishment of a National Radon Action Week to encourage these activities.

This resolution has been endorsed by a broad range of groups and associations, including the American Lung Association, the American Cancer Society, the National Congress of Parent Teachers Associations, the National Education Association, the Consumer Federation of America, and the State and Territorial Air Pollution Control Administrators.

I encourage my colleagues to cosponsor this resolution and I ask unanimous consent that a copy of the resolution appear in the RECORD.

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

S.J. RES. 118

Whereas exposure to radon poses a serious threat to the health of the people of this Nation;

Whereas the Environmental Protection Agency estimates that lung cancer attributable to radon exposure causes approximately 14,000 deaths a year in the United States;

Whereas the United States has set a long-term national goal of making the air inside buildings as free of radon as the ambient air;

Whereas excessively high levels of radon in homes and schools can be reduced successfully and economically with appropriate treatment;

Whereas only about 6 percent of the homes in this Nation have been tested for radon levels;

Whereas the people of this Nation should be educated about the dangers of exposure to radon; and

Whereas people should be encouraged to conduct tests for radon in their homes and schools and to make the repairs required to reduce excessive radon level: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 17, 1993, through October 23, 1993, is designated as "National Radon Action Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate ceremonies and activities.

ADDITIONAL COSPONSORS

S. 261

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 261, a bill to protect children from exposure to environmental tobacco smoke in the provision of children's services, and for other purposes.

S. 262

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a

cosponsor of S. 262, a bill to require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a non-smoking policy in buildings owned or leased by Federal agencies, and for other purposes.

S. 565

At the request of Mr. WARNER, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 565, a bill to amend the Internal Revenue Code of 1986 to improve disclosure requirements for tax-exempt organizations.

S. 599

At the request of Mr. GRASSLEY, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 599, a bill to amend the Internal Revenue Code of 1986 to provide a permanent extension for the issuance of first-time farmer bonds.

S. 636

At the request of Mr. KENNEDY, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 636, a bill to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

S. 653

At the request of Mr. METZENBAUM, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 653, a bill to prohibit the transfer or possession of semiautomatic assault weapons, and for other purposes.

S. 1111

At the request of Mr. KERREY, the names of the Senator from Minnesota [Mr. WELLSTONE], the Senator from Alaska [Mr. STEVENS], the Senator from Mississippi [Mr. LOTT], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 1111, a bill to authorize the minting of coins to commemorate the Vietnam Veterans' Memorial in Washington, D.C.

S. 1116

At the request of Mr. BURNS, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 1116, a bill to amend the Internal Revenue Code of 1986 to clarify the deduction for expenses of certain home offices, and for other purposes.

S. 1160

At the request of Mr. HATFIELD, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Illinois [Mr. SIMON], the Senator from Wyoming [Mr. SIMPSON], the Senator from Tennessee [Mr. MATHEWS], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 1160, a bill to amend the Public Health Service Act to provide grants to entities in rural areas that design and implement innovative approaches to improve the

availability and quality of health care in such rural areas, and for other purposes.

S. 1234

At the request of Mr. BAUCUS, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1234, a bill to authorize the payment of Servicemen's Group Life Insurance in accordance with title 38, United States Code, as amended effective on December 1, 1992, in the case of certain members of the Armed Forces killed in an aircraft accident on November 30, 1992.

SENATE JOINT RESOLUTION 117

At the request of Mr. BIDEN, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Joint Resolution 117, a joint resolution to designate August 1, 1993, as "National Incest and Sexual Abuse Healing Day."

SENATE CONCURRENT RESOLUTION 21

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Concurrent Resolution 21, a concurrent resolution expressing the sense of the Congress that expert testimony concerning the nature and effect of domestic violence, including descriptions of the experiences of battered women, should be admissible if offered in a State court by a defendant in a criminal case.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on August 2, 1993, at 2:30 p.m. on the nominations of James E. Hall to be a member of the National Transportation Safety Board, Louise Frankel Stoll to be Assistant Secretary of Transportation for Budget and Programs and Frank Eugene Kruesi to be Assistant Secretary of Transportation for Transportation Policy.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 3 p.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 4 p.m. to hold a nomination hearing on Mr. Joe Grandmaison, to be Director of the Trade and Development Agency.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources' Subcommittee on Labor be authorized to meet for a hearing on recent court decisions and executive life annuities, during the session of the Senate on Monday, August 2, 1993, at 10 a.m.

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

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 10:30 a.m., to hold a hearing on Manville bankruptcy.

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

EXECUTIVE SESSION

NOMINATION OF RUTH BADER GINSBURG, OF NEW YORK, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

The Senate continued with the consideration of the nomination.

Mr. ROBB. Mr. President, I rise today to speak in support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court of the United States.

It has been 26 years since a Democrat has had the opportunity to choose a nominee for the U.S. Supreme Court, and President Clinton has made a superb choice. His nomination of Ruth Bader Ginsburg is one based on her sterling reputation as a talented judge, her role as one of the foremost legal advocates for women's rights during the 1970's, and her potential to build consensus on the Supreme Court.

Not only has Judge Ginsburg received the highest possible rating of the American Bar Association—a unanimous judgment by a 15-member panel that she is well-qualified for the job—but she has also been favorably reported out of the Senate Judiciary Committee by a unanimous vote. She has received bipartisan acclaim from Senators on the Judiciary Committee, who have praised her as an outstanding choice. She has impressed those Senators as serious, intelligent, and confident.

Colleagues of Judge Ginsburg have described her as a restrained, fair-minded, and moderate jurist with a keen intellect.

I am especially impressed with Judge Ginsburg's activism and advocacy regarding women's rights. As founder of the Women's Rights Project of the American Civil Liberties Union, Judge Ginsburg worked hard to make

changes. She skillfully invoked the equal protection clause to combat gender distinctions in the law. This approach was groundbreaking because the U.S. Supreme Court had not previously applied the 14th amendment to gender-based discrimination. Through five victories in six Supreme Court cases, she used the 14th amendment to erase gender lines in areas ranging from military benefits to jury duty to the administration of estates. This series of victories provided the impetus for altering hundreds of laws and regulations across the country. Becoming the second woman on the Supreme Court seems to be the perfect culmination of Judge Ginsburg's lifelong commitment to systematically removing barriers for women in the United States.

While at the ACLU, Judge Ginsburg did something which speaks volumes about why she has received virtually unqualified support from my colleagues. While working on a case to persuade the Supreme Court to reverse its decisions on three major 20th century cases that had sustained sex discrimination, she prepared a brief in which she listed the names of two other attorneys as counsel for the plaintiff.

This in itself was not unusual since attorneys usually list cocounsel as a matter of course. What was unusual, and instructive, in this case was that the two attorneys she listed did not write a word of the brief, but paved the way for its creation. The two attorneys listed by Judge Ginsburg were Dorothy Kenyon and Pauli Murray, true pioneers in the fight for equal treatment for women.

While judges are required to follow the decisions of those who came before them, we as human beings often fail to recognize and give due respect to those who came before us and those whose past sacrifices have made possible the successes we achieve today. Judge Ginsburg not only recognizes *stare decisis*, which as a judge she is compelled to do, she also recognizes the debt we owe to those who have struggled before us.

This speaks not only to her attributes as a judge, but also to her character as a person. This quality of judicial restraint tempered with human feeling makes her an especially appropriate choice for this seat.

As one article points out, Judge Ginsburg is not

*** interested in the dogmatic pursuit of a political or ideological agenda. Rather, we can expect her to focus on cultivating the evolution of constitutional principles that are firmly grounded in important national values and reflect a mutually respectful relationship with the other branches and levels of government. That perspective may not accord with the fancies of judicial activities

right or left, but it's one well worth strengthening on the Court.

Judge Ginsburg has adopted a moderate approach to judging, following the letter of the law and leaving policy choices to the legislators.

I am convinced Ruth Bader Ginsburg will be able to skillfully integrate her vast wealth of knowledge—acquired from her experiences as a wife, mother, and respected jurist, who has lived through many struggles, both personal and political—into the tough decisions put before her.

It is for these reasons and more that I strongly urge my colleagues to vote to confirm Ruth Bader Ginsburg to the Supreme Court. After having reviewed her background and life experience, I am confident that she will serve with poise, wisdom, and distinction.

Mr. President, I yield the floor.
I thank the Chair and 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. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LEGISLATIVE SESSION

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

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

MORNING BUSINESS

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. BIDEN. Mr. President, I ask unanimous consent that the votes ordered relative to the nominations considered during today's session occur on Tuesday, August 3, as follows: That upon the disposition of H.R. 2010, the national service bill, the Senate proceed to executive session to vote on the confirmation of Judge Ruth Bader Ginsburg, and that the remaining nominees, Messrs. Payzant and Hackney, be voted on in the order in which they were debated, with all of the above occurring without intervening action or debate; that the first two votes in the voting sequence be the usual duration, that is, 15 minutes plus the extra 5 minutes, if needed, and the remaining two votes in the sequence be 10 minutes in duration; further, that

upon conclusion of the last vote in the sequence, the Senate then return to legislative session.

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

ORDER OF PROCEDURE

Mr. BIDEN. Mr. President, I request that Senators, when they cast their vote on the Ginsburg nomination, cast their votes from their desks for that nomination.

ORDERS FOR TUESDAY, AUGUST 3, 1993

Mr. BIDEN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:40 a.m. Tuesday, August 3; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; and that immediately following the Chair's announcement, the Senate resume consideration of S. 919, as provided for under the provisions of a previous unanimous consent agreement; that upon disposition of the Hackney nomination and the Senate returning to legislative session, that the Senate then resume consideration of H.R. 2403, the Treasury, Postal Service appropriations bill; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m., in order to accommodate the respective party conferences.

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

RECESS UNTIL TOMORROW AT 9:40 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess, as previously ordered.

There being no objection, the Senate, at 7:23 p.m., recessed until Tuesday, August 3, 1993, at 9:40 a.m.

NOMINATIONS

Executive nominations received by the Senate August 2, 1993:

DEPARTMENT OF STATE

William Green Miller, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Ukraine.

CONFIRMATION

Executive nomination confirmed by the Senate August 2, 1993:

DEPARTMENT OF JUSTICE

ELEANOR ACHESON, OF MASSACHUSETTS, TO BE AN ASSISTANT ATTORNEY GENERAL.