UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE *100th* CONGRESS

FIRST SESSION

VOLUME 133—PART 22

OCTOBER 30, 1987 TO NOVEMBER 13, 1987

(PAGES 30273 TO 31917)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1987

world, are other nations doing in the order we have chosen.

The PRESIDING OFFICER. The Senator from Washington has consumed 15 minutes.

Mr. EVANS. Mr. President, will the Senator from Louisiana give me about 3 more minutes?

Mr. JOHNSTON. Yes, Mr. President.

The PRESIDING OFFICER. Without objection, the Senator is recognized for 3 minutes.

Mr. EVANS. Nowhere in the world are they doing it the way we are. France and Sweden both understand the technology of a monitored retrievable storage. They have them operating. We saw them. We visited each of them. They are of two different types, but both working very successfully, incidently, with the support and acquiscence of the people who live in and around these sites.

They understand, as we should, that you start with what you know best, put them into operation, collect the waste, adequately handle it, process it if you desire to, and continue to study a deep repository which should come later. The advantages of this are so well known and so straightforward that I fail to understand why we as a nation uniquely have rejected this order of events. We know the techniques of an MRS. It cools the waste and makes a deep repository cheaper and easier to ultimately construct. It probably, if we did it right, would cool the waste sufficiently so that we would make a second repository unnecessary, not just for an interim period but probably forever. It gives us time to really settle on the design and location of a deep repository.

We are more likely, ultimately, Mr. President, to gain acceptance of a monitored retrievable storage than we are a deep repository. Legislators from my own State even said, in a letter sent to me signed by 21 legislators, that if a defense MRS were built at Hanford, which is desperately necessary, that they could see the acceptance of some civilian waste along with that.

We have better information on an MRS from other nations. And if we move in the same order they are moving, we will gain their knowledge on deep repositories before having to make a decision.

We are pushed, shoved, scared by outside forces and organizations, each with their own agenda in trying to push us into a deep repository and ignore the value of a monitored retrievable storage.

But, Mr. President, we are where we are. It is time to make decisions. I believe the energy bill does so in a clear, in an orderly, and in a cost-effective manner. It minimizes delay and it also, Mr. President, minimizes politics.

I do not think we should conjecture on what the other House may do in the selection of conferees or how they would handle the negotiations between the two Houses. I do not believe we should respond to those who said, "Well, we can't legislate on an appropriations act." If that were a uniform conclusion, I would support it enthusiastically. But everyone knows that we constantly and repetitively legislate on an appropriations act where it appears to be the desirable thing to do. And that is precisely what we are doing here.

Mr. President, I hope that when the votes come up today and over the next several days we vote to sustain the position of the Energy Committee, we vote to move ahead on this process, and we vote most of all to reject the concepts of delay and politics which, I fear, too much have gotten involved in this debate.

The PRESIDING OFFICER. The time of the Senator from Washington has expired. Who yields time?

Mr. EXON. Mr. President, I would like to ask if the two sides would yield me 5 minutes out of their remaining time to speak on the subject, since no one else is anxious to speak at this moment. If I could get 2½ minutes of the 1-hour time allocated to the Senator from Nevada and 2½ minutes from the other side of the issue, I could dispose of this matter and I think not delay the Senate.

Mr. REID. Does the Senator from Louisiana wish to yield?

Mr. JOHNSTON. I will, reluctantly. I think we will be running out of time. I thought the Senator from Nevada——

Mr. REID. I was ready to proceed, but if the Senator is willing to yield 2½ minutes, I will, also.

Mr. JOHNSTON. Mr. President, I will very reluctantly do that and say this is the last such request I will accede to, because I am going to have to limit the people on my side. I do not know where they are.

Mr. REID. I will join with the Senator.

Mr. JOHNSTON. I yield.

Mr. EXON. Let me ask unanimous consent that I be allowed to proceed for 5 minutes without the time being charged to either of the other parties to the time agreement and that, if necessary, the vote be delayed by 5 minutes after the scheduled 1 o'clock vote.

Mr. BYRD. Mr. President, reserving my right to object, I do not wish to enter into any agreement that would have the effect of delaying the 1 o'clock vote.

Does the Senator wish to speak as in morning business?

Mr. EXON. I have been trying to accommodate everyone on this. As usual, we run into these situations where people have been on the floor, talking incessantly, about this very important matter. I think I have something important I want to say on another matter. I would like to speak for 5 minutes as if in morning business under some arrangement.

Mr. BYRD. Mr. President, how about having the time come out of both sides equally?

Mr. REID. We have already agreed to that, Mr. Leader.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

YOUTHFUL DRUG ABUSE AND THE SUPREME COURT

Mr. EXON. Mr. President, I thank my colleagues for their consideration. I am pleased with the President's nomination of Judge Anthony Kennedy to the vacancy on the U.S. Supreme Court. Judge Kennedy, of Sacramento, comes to this body with a lot of very progressive and yet conservative views. I believe at this juncture, from what I know now, subject to the confirmation process, that he is a good nominee.

Judge Kennedy's reputation as a sound conservative jurist precedes him and bodes well for his early eventual confirmation. However, as I said before and cautioned before, let us allow the confirmation process and approval to work in the Senate. It has served us well in the past.

The withdrawal of the nomination of Judge Ginsburg may in the long run prove to be a positive action and have a positive effect on society in general and prove to be very instrumental in moving forward our fight against illegal drugs. It sends a message to our youth that society condemns the use of all illegal drugs and this might be a turning point in our war against drugs. If so, the failed Ginsburg nomination might be eventually looked back upon as a shot heard round the world in the successful fight against drug abuse, especially youthful drug abuse, that I have fought all my life.

There has been a near landslide of prominent and effective public officeholders who have conceded early experimentation with marijuana. I reject the views of the holier than thou; those few who hold no one who has ever experimented with the drug are not fit for public office, years later, because of that transgression alone.

Where are our real Judeo-Christian ethics and principles? Who is the first among us to be without sin? I say again that I have never used marijuana. However, to say that that alone makes me holier than others and better qualified to serve in the public office—it is gross nonsense.

I was safely home during the Vietnam war tragedy, resting on my laurels as a World War II veteran, in an adult society that frowned upon long

hair and marijuana as kid stuff. We should remember it was the kids of that era who lived and died in Vietnam and it was us good guys, clean and wholesome, who exposed them to the Vietnam syndrome and brought them home—those who lived—to an aura of "Sorry about that."

The political purists of today who do not recognize the difference between the general pressures of the Vietnam-driven society and today talk as if they were smoking grass; even if they are, as I do not believe, free from any law violations.

Mr. President, I yield back the balance of my time and I thank my colleagues.

The PRESIDING OFFICER. The Senator form Nebraska yields time. Who yields time? The Senator from Nevada.

Mr. REID. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 10 minutes.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1988

The Senate continued with the consideration of the bill (H.R. 2700).

Mr. REID. Mr. President, my friend from Washington, the senior Senator from Washington, I think, did what any good engineer would do, that is give a very poor history lesson.

In his opening remarks the senior Senator from Washington said he was going to give a history lesson, and then failed to do so. I would suggest that nowhere in my statements have I said anything about the monitored retrievable storage system being something that we should not do. In fact, if the senior Senator from Washington would look at the record, it would show that anything being done with the monitored retrievable storage system that is somewhat unusual is in the context of this legislation on an appropriations bill. It is nothing that this Senator has said or done, or nothing that the Environment and Public Works Committee has done.

If, in fact, anyone would look at the statements made by the senior Senator from Washington where he said: Nowhere do I say that we should do away with the monitored retrievable system—neither are we. I think that the Senator's suggestion is along the same lines as ours. Perhaps he has not been briefed properly by his staff as to what has been going on on the Senate floor. We do not suggest delay. The senior Senator from Washington suggests there might be something magical in the 1988 and 1990 election periods. Those Senators that have taken time on this floor; namely, the junior Senator from Washington and the junior Senator from the State of Nevada, we are not up for election in 1988 or 1990; we were just elected. So I would suggest, again, that this is an example of why engineers should not give history lessons.

I would further suggest, Mr. President, that the senior Senator from the State of Washington says: Follow the Energy Committee. We are not here with the Energy Committee; we are here with the Appropriations Committee. That is what is before this body, not the Energy Committee. So how can we possibly be asked to do that? We have an appropriations bill that is before this body and that is the bill we are debating. There should not be legislation on an appropriations bill.

The Senator talks of the time spent by the Energy Committee. Well, maybe they did; but certainly the Appropriations Committee is being asked to violate its own rules, and we as a Senate body are being asked to violate our own rules by legislating on an appropriations bill. Again, this is why an engineer should not give a history lesson.

I would also suggest, Mr. President, while we are talking about this history lesson, there has not been one word said to refute the history lesson that has been promulgated on this Senate floor these past 2 weeks; namely, that the Department of Energy has committed a travesty in the way they have interpreted the 1982 law.

No one has gone into the fact that the General Accounting Office, that the Ninth Circuit Court of Appeals, that the President of the United States, that the other body have talked about how poorly the Department of Energy has conducted itself; namely, by not following the law, not following its own rules and regulations, and not following its own scientific findings. That is something that in this history lesson should have been reviewed. The Senator suggested that he could, in 15 minutes, refute what has been said on this floor these past few days.

I would respectfully suggest that that is an engineer's history lesson and not a historian's history lesson.

Mr. President, also the point was made by the senior Senator from Washington about cost, about how that was the primary consideration.

Well, that, Mr. President, should not be the primary consideration in burying the most poisonous substance known to man. That is right, the most poisonous substance known to man should not be dependent upon cost. The No. 1 consideration should be public health and safety.

The distinguished senior Senator from Washington has said we should have the MRS and likely we do not need a high-level repository.

Well, that does not seem to be in keeping with what other people have said on this legislation. S. 1668 directs its entire attention to a high-level repository, and only a high-level repository. To do it quick and real quick.

So, Mr. President, I would respectfully suggest and submit that the history lesson we have been given this morning deserves not an average grade, not a C, but, maybe a D-minus.

Mr. President, I ask unanimous consent that the time that I have remaining of my 10 minutes be reserved.

The PRESIDING OFFICER. The Senator reserves the remainder of his time.

Mr. ADAMS. Mr. President, how much time remains for Senators ADAMS and REID?

The PRESIDING OFFICER. Fifty-seven minutes.

Mr. ADAMS. Mr. President, I yield myself 10 minutes of that time.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. ADAMS. Mr. President, for the last week, and actually for a longer period than that but particularly in this last week, Senator REID and I have been on the floor explaining our objections to the substance and to the procedure of the proposed changes in the Nuclear Waste Policy Act brought to us by the Appropriations Committee. We will soon be voting on that proposal.

We are asking that when that vote occurs, and it will be immediately after the Older Americans Act vote, that our colleagues join with us and vote "no" on including the Nuclear Waste Policy Act. It is a straight up-or-down vote to vote "no" on including it in the appropriations bill.

I have thought a great deal about what more I could say to my colleagues before this vote is cast. Mr. President, I guess it comes down to this: I know, and the people of my State know, that Washington is a potential site for a nuclear waste repository. We understand that.

Mr. President, we want and deserve some assurance that the process is fair and scientific, and we will not have that under the plan that is before us today. We simply will not have it. We regret that. We want to have a scientific procedure.

Instead, what we will have, if this amendment putting S. 1668 into this appropriation bill should pass, is a selection process that has been totally distorted by political rather than scientific considerations.

Mr. President, I do not think a single Senator, a single Member of the House, a single objective observer would care to defend the role that DOE has played as the lead agency in the nuclear waste program. At every turn, they have made not only mistakes but have destroyed the consensus that we had on nuclear waste policy starting in 1982. They failed to follow the law, failed to follow their

UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS

FIRST SESSION

VOLUME 133—PART 25

DECEMBER 11, 1987 TO DECEMBER 20, 1987

(PAGES 35013 TO 36715)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1987

The vitality of our economy will also depend heavily on maintaining America's preeminence in research. As the White House Science Council concluded in 1986, we must improve the facilities and instrumentation on which scientific progress depends, while insuring an adequate supply of talented scientists and engineers.

We recommend that your Administration:

Respond to the nation's need for more scientists and engineers by expanding federal support for graduate student assistantships and for faculty research. The evidence of shortages is clear; for example, over half of all doctoral recipients in engineering last year were citizens of other countries.

Support the construction and renovation of research and teaching facilities through matching grants and low interest loans by the National Science Foundation, the National Institutes of Health and other agencies whose missions include research support. Matching provisions should be waived for institutions with a limited financial base that demonstrate a commitment to upgrade their science programs.

Implement existing legislative authority to help colleges and universities obtain access to capital markets for construction, renovation and equipment of facilities; and provide private colleges and universities the same access to the tax-exempt bond market that public institutions already enjoy.

Encourage the development of new partnerships between business and education, to stimulate the industrial and commercial applications of academic research.

3. Reaffirm the National Commitment to Expanded Educational Opportunity

Expanding educational opportunities can help prepare all of our people for the challenges of the 21st century. This is especially important when the proportion of minorities among our young people is expected to reach one-third by the year 2000, while their participation is declining at each successive level of education. It is time for a basic review of the federal role in student aid to assure a stable and consistent public policy that regards education at all levels—and the students who pursue it—as vital national resources.

We recommend that your Administration:

Intensify federal efforts to encourage disadvantaged students to complete school and to pursue a college education. Such successful programs as Head Start and Upward Bound should be strengthened and expanded.

Increase funds for grant assistance to needy students. Funds for other student aid programs—including enhanced opportunities for students to support their own education by working—should also be expended and modified both to target funds effectively, and to insure students a choice among institutions.

Continue action to reduce student loan defaults. As the real value of federal grants declined in recent years, increasing numbers of low-income students have been forced to assume unreasonable debt burdens to finance their education. More adequate grant support can mitigate excessive reliance on loans, especially in the first two years of undergraduate study. Colleges and universities, lending institutions, and federal and state governments must cooperate to assure that borrowers repay their loans.

Propose incentives for parents and families to save systematically for their children's education. A college savings bond or educational savings account that allows for participation by low-income families deserves consideration as a supplement to existing student aid programs.

Expand graduate fellowships for minorities and, in the physical sciences and engineering, for women. Colleges and universities should encourage such fellowship recipients to pursue academic careers. Fellowship programs should include summer research grants, assistantships, advanced research and training opportunities, and early identification of potential recipients.

Coordinate federal, state and local welfare policies so that welfare recipients who receive student aid do not risk losing their maintenance benefits.

4. Encourage Educational Activities that Address Human Needs and the Quality of Life

Experience and common sense tell us that there is no single set of remedies for such problems as poverty, unemployment and inadequate health care. But in each case, finding solutions requires new knowledge and research.

We recommend that your Administration:

Increase support for applied social science research in areas vital to the formulation of national policy by agencies such as the Department of Health and Human Services, the Department of Labor, the Department of Housing and Urban Development, and the Department of Education.

Initiate programs to study and improve the quality of public and preventive health care and the delivery of health care services.

Strengthen the capacity of the federal government to collect and disseminate statistical data about the demography of the work force, patterns of health and education, and other social and economic indicators.

Reaffirm the importance of the liberal arts tradition in our society. Federal support for the arts and humanities, libraries and museums, for example, should resume its rightful place among the nation's priorities.

Increase support for the preservation and maintenance of books and other scholarly resources, and for the development of new computerized capabilities for information storage and retrieval, through the Library of Congress and other federal agencies.

5. Restore Respect for Fundamental Values and Ethical Behavior

As leader of our country, you are in a unique position to help mold our purposes as a nation, give meaning to the lives of our people and rekindle a spirit of social obligation. In all these respects, you and your Administration can build upon successful existing programs that provide opportunities for college and university students to serve society.

We urge that you:

Expand such programs as the Peace Corps and Vista for community service at home and abroad.

Strengthen, through federal student aid programs, incentives to students for community service work.

Explore ways to encourage students to enter public service careers in such fields as teaching, public health and social welfare.

CONCLUSION

Although the agenda we have set before you is ambitious, the responsibility for carrying it out does not fall to you solely or to the government you lead. This memorandum not only describes the issues to which we believe you must attend; it also defines the contributions that higher education can make to the progress of the nation. We believe that the agenda we propose will, if adopted, reinforce a partnership that has been of great benefit to our people in the past and holds rich promise for the future.

In offering this agenda, we ask no more of you than we ask of ourselves. Extensive and serious study and revision of academic programs are already underway. Our institutions are also in the midst of a sweeping reevaluation of the quality of teacher preparation. Working with secondary schools, we are establishing more demanding standards for college admission. We are striving to renovate our scientific laboratories and to strengthen our links with business and industry.

We intend to intensify our self evaluation and to continue to enhance the education that we provide. We realize that the vitality of the United States is, in crucial ways, directly dependent on the quality of our institutions and their graduates. To insure that quality is our obligation; we pledge to you our determination to maintain it.

You begin your presidency at a critical moment in the life of our country. The American people are entering a new century and a new world. Challenged as never before, will our people be prepared? We believe the answer must be yes.

Working together, we are confident that you and we can serve the nation and fulfill the aspirations of the American people.

Mr. SANFORD. I yield.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina yields the floor.

The Senator from Pennsylvania.

JUDGE KENNEDY

Mr. SPECTER. Mr. President, with the conclusion of the Judiciary Committee hearings, I believe it is timely and appropriate to state my intention to vote to confirm Judge Anthony M. Kennedy for the Supreme Court of the United States unless some significant adverse information is forthcoming between now and floor action which appears unlikely in view of the evidence already presented on his record including witnesses from his home town from diverse backgrounds.

I have concluded that Judge Kennedy is qualified for the Supreme Court after studying many of his opinions, reading his speeches, meeting with him privately for some 3 hours and participating in the Judiciary Committee hearings including extensive questioning of the nominee.

The evidence shows a man of intellect with sound values, an excellent academic record, extensive experience as a practicing lawyer, and balance as a Federal Court of Appeals judge.

He does not wear an ideological straitjacket but has demonstrated judicial restraint in sharply limiting his opinions to the narrow issues of the cases without legislating. His opinions, speeches and answers show a capacity for growth and an appreciation of the "spacious" liberty clause of the Constitution to enable a "people (to) rise above its own injustice" to correct

"the inequities that prevail at a particular time."

While Judge Kennedy's overall record shows balance, there are significant areas of concern arising from some decisions on women's issues and minorities' rights. Nathaniel S. Colley, Sr., a black civil rights leader from Sacramento, Judge Kennedy's home town, provided key insights into the nominee's approach to constitutional rights based on his contacts with the Kennedy family since 1949 and personal knowledge of Judge Kennedy for 20 years. While disagreeing with some of Judge Kennedy's specific decisions, Mr. Colley testified that the nominee had a solid record on civil rights, saying he was a grown man who would grow more.

The confirmation process itself may contribute to such growth. At the conclusion of my meetings with Judge Kennedy, he asked me if the advise and consent function of the Senate was designed to give advice to the nominee. I responded that it was up to the nominee; but there is no doubt that the numerous "courtesy calls" and the extensive hearing process containing more Senators' speeches than questions provide the nominee with substantial, albeit unsolicited, advice. This expanded process in recent confirmation proceedings has the potential to add a new element to Justices' thinking as Senators transmit a distillation of constituent or populist views to the nominee.

It is, of course, not a one-way street. In the last two confirmation hearings, the Senate Judiciary Committee has opened a busy thoroughfare eliciting the nominee's judicial philosophy with Senators seeking to influence, openly and properly in the public arena, the nominee's views on important constitutional issues.

Judge Kennedy's hearings significantly advanced the important precedent that judicial philosophy is within the proper scope of inquiry in the confirmation process and hopefully Judge Kennedy's hearings also provided the nominee with additional insights on legitimate concerns of the American people on important constitutional issues.

I thank the Chair and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania has yielded the floor.

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Thank you, Mr. President.

INDICATORS OF STANDARD OF LIVING

Mr. BINGAMAN. Mr. President, since the spectacular 508-point drop in the Dow Jones average on October 19, our attention has been focused on reassuring world financial markets by reducing the Federal budget deficit. While calming a jittery market and reducing the budget deficits are worthy goals in and of themselves, they should not be our only priority. This Nation has serious structural economic problems, of which the stock market crash is only one. These problems predate the stock market crash and will persist after the implementation of the budget reduction plan.

OUR DECLINING STANDARD OF LIVING

The administration continues to insist that the fundamentals of the economy are sound and that Americans really are better off than they were before 1980. To back up this claim, the administration points to two common indicators of standard of living: Real disposable income per capita and real personal income per capita. These indicators represent the average of American annual income, adjusted for inflation. Disposable income is after-tax income and personal income is before-tax income. Between 1970 and 1986, real personal income per capita rose by 37 percent, while real disposable income per capita rose by almost 35 percent. Real personal income per capita has risen from almost $12,000, 1982 dollars, in 1980 to almost $13,400, 1982 dollars, in 1986.

Yet, despite these figures, Gallup Polls taken in each of the past 4 years show a majority of Americans saying that they were financially the same or worse off than they were the year before. To clarify the picture, I asked the Congressional Research Service [CRS] to look at various indicators of standard of living. Today, I am releasing their report, "Measures of Real Earnings Since 1970." This report shows that common measures of standard of living, specifically real personal income per capita, are misleading. These measures present statistical averages that say little about the actual financial condition of average American families.

The report concludes that, despite administration claims to the contrary, key measures of standard of living have either stagnated or fallen, not risen, since the 1970's. Average real wages and salaries per hour for all persons in the private sector—business owners, managers, and workers—remain below their peak in the mid-1970's. For average American workers—production and nonsupervisory workers in the private sector—average hourly wages "declined from 1973 to 1975 and then dropped precipitously from 1978 through 1982 * * * [and] have shown no appreciable recovery since then. In 1986, this gauge was 10 percent below its 1973 peak."

Thus, the Reagan expansion following the Reagan recession has produced not a higher standard of living for average Americans, but rather, lower wages than they received in the 1970's.

HOW THE FIGURES MISLEAD

According to the CRS study, much of the increase in real personal income per capita has been due to two factors: Rising nonlabor income, specifically transfer payments and interest income, and rising hours worked per capita due to an increase in labor force participation. Between 1970 and 1986, real nonlabor income per capita, including income from interest and transfer payments such as Social Secutiry, Medicare, unemployment compensation, and AFDC, rose 81 percent. Nonlabor income now makes up almost one-third of personal income compared to less than one-quarter of personal income in 1970.

The second factor in the increase in these personal income statistics is a rise in the labor force participation rate—that is, a rise in the number of people working per capita. There is today a greater percentage of the population and of family members in the labor force, working or looking for jobs, than there was in 1970. The rise in the number of working wives and two-income households is part of this trend. Because per capita is based on the total population and not on the size of the labor force, an increase in the percentage of the population in the labor force artificially increases the income per capita figures.

As an example of how this is an artificial increase, take the economy of a family of four where only the husband works. Income per capita in his family's world equals his wages divided by four. If the wife then goes to work, income per capita will go up. But the husband is not earning more per hour; the wife has just sacrificed time at home with her children in order to increase her family's per capita income. The same thing happens in the general economy—more people working as a percentage of the population means more income as a percentage of the population, per capita, not more earnings per individual working.

In other words, real personal income per capita has grown because of high real interest rates paid to people with capital to invest, because of expanded entitlement programs, and because more family members are working—not because Americans are earning more.

Another technical factor also overstates the rise in real personal income. Economists use two different measures of inflation: The GNP price deflator and the Consumer Price Index [CPI]. To calculate real—that is inflation adjusted—personal income per capita, the GNP price deflator for personal consumption is used. This measure rose slower between 1970 and 1986 than did CPI. Using CPI to calculate

protect the lives of American soldiers in West Europe, to protect our ground troops there. The arguments that were used when I was a young Congressman in the other body were that we would not have such a buildup of conventional forces, we would instead be having a buildup of short-range missiles to stop tanks and stop advancing columns of troops. And this is thought to have brought a balance of forces of that area.

Over the years, it has. Indeed Margaret Thatcher gave a speech in Moscow and she talked about the deterrence of the intermediate and short range missiles in Europe, and that it has brought a period of peace to that area. At least in land wars they have not gone at each other for longer than any time in modern history.

So I think we need to think deeply before we take our trump card out. Our trump card there is our intermediate and short-range missiles on our side. I say "our" speaking of NATO and the United States. The Soviets will keep their trump card which is conventional troops and tanks.

Mr. President, I have a list of the Soviet advantages which I shall not dwell on heavily. I would point out that by all estimations it is 4- or 3-to-1 in favor of the Soviets and the Warsaw Pact in conventional force levels. The current specific imbalances as calculated from the Defense Department's unclassified estimates are as follows: Main battle tanks, Soviets, and Warsaw Pact, a 2-to-1 advantage; heavy artillery the Soviets and the Warsaw Pact 2.3-to-1 advantage; armored personnel carriers, the Soviet Warsaw Pact, 1.3-to-1 advantage; tactical aircraft, 1.2-to-1 advantage; interceptor aircraft, 2.4-to-1 advantage; intermediate range bombers, 6-to-1 advantage.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. PRESSLER. I ask unanimous consent to proceed for an additional 2 minutes.

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

The Senator is recognized for 2 additional minutes.

Mr. PRESSLER. Surface-to-air missiles, 10 to 1; armed helicopters, 1 to 1; antitank guided weapons 1.2 to 1; chemical and biological warfare capabilities 25 to 1; and finally, combat divisions, 2 to 1 Soviet-Warsaw Pact advantage.

So, Mr. President, my amendment states that:

Notwithstanding any other provision of this Treaty including other provisions of this Article, this Treaty shall not enter into force until the President of the United States of America shall have certified to the United States Senate that the conventional force imbalance between the deployed and reserve conventional forces of the United States and the North Atlantic Treaty Organization and the reserve and deployed conventional forces of the Union of Soviet Socialist Republics and the Warsaw Pact does not exceed a ratio of 3:2 of advantage in favor of the Union of Soviet Socialist Republics and the Warsaw Pact. This certification could provide an agreement to reduce Soviet and Warsaw Pact forces within a certain time period simultaneously with the implementation of other portions of the treaty.

In other words, there would have to be an agreement to reduce Soviet and Warsaw Pact forces. They would still have a 3-to-2 ratio. They would still have hegemony in terms of ground forces in the area. And they probably would not agree to anything else. So this is a very reasonable amendment. It does not ask for parity. It does not ask for equality. We could ask for that. I believe this amendment will be offered in various forms in the Foreign Relations Committee or on the floor. I think it may well come from the other side of the aisle. It is an amendment that allows the Soviets a 3-to-2 superiority. It would be a reduction from their 4-to-1 superiority at present, but it is something that is very much in the United States' interest because if we do not have this, we will be very much changing the balance in Europe by eliminating our INF forces. That is not my intention.

Mr. President, I ask unanimous consent to print my amendment in the RECORD.

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

(Purpose: To provide that the proposed Treaty shall not be put into effect unless and until the President has certified to the Senate that an agreement has been reached that the conventional force imbalance does not exceed a ratio of three:two in favor of the U.S.S.R. and Warsaw Pact)

Add at the end of Article XVII of the proposed Treaty the following new paragraph:

"3. Notwithstanding any other provision of this Treaty including other provisions of this Article, this Treaty shall not enter into force until the President of the United States of America shall have certified to the United States Senate that the conventional force imbalance between the deployed and reserve conventional forces of the United States and the North Atlantic Treaty Organization and the reserve and deployed conventional forces of the Union of Soviet Socialist Republics and the Warsaw Pact does not exceed a ratio of 3:2 of advantage in favor of the Union of Soviet Socialist Republics and the Warsaw Pact. This certification could provide an agreement to reduce Soviet and Warsaw Pact forces within a certain time period simultaneously with the implementation of other portions of the treaty. In the event such certification is made the United States of America shall immediately notify the Union of Soviet Socialist Republics of such fact, and this Treaty shall enter into force ten days after such notification or upon the date of exchange of instruments of ratification whichever shall later occur."

Mr. HEFLIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I ask unanimous consent to be allowed to proceed to finish my speech which I am convinced will not exceed 6 minutes.

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

THE NOMINATION OF JUDGE ANTHONY M. KENNEDY TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. HEFLIN. Mr. President, I rise today in support of the nomination of Judge Anthony Kennedy to be an Associate Justice of the U.S. Supreme Court.

I do so only after examining his written opinions, reading his speeches, and listening to his testimony and the testimony of others during the Senate Judiciary Committee hearings.

I went to the hearings without any preconceived conclusions and have endeavored to keep an open mind and let fairness dictate my decision. I have followed the same procedure in Judge Kennedy's case that I have followed in all judicial nominations. The hearings are now over and no substantial evidence was produced against his confirmation. In the absence of any substantial evidence against him or the creation of any doubt about his fairness, temperament, and integrity, I feel I am now in a position to announce my support for Judge Kennedy, and can change hats, so to speak, from being a judge to now becoming an advocate.

During his 2 days' of testimony before the Senate Judiciary Committee, Judge Kennedy proved himself to be a conservative, not an extremist nor an activist. He is clearly within the mainstream of American judicial thought and there are no blemishes on his integrity, character, or temperament. While I do not agree with all of his decisions, I do believe he is well balanced to be a Supreme Court Justice. Judge Kennedy was very open in expressing his judicial philosophy, and I was heartened to hear that he has no single, simple constitutional theory for interpreting all cases including complex cases that come before the Supreme Court.

Much has been said about the seat that Judge Kennedy has been nominated to fill, and the Justice who vacated that seat. Justice Powell's presence will be missed. However, I believe that Judge Kennedy, if confirmed, will approach the position with the same sense of restraint, respect and humility that Justice Powell exhibited during his tenure on the bench.

The American Bar Association unanimously gave Judge Kennedy its highest rating for a Supreme Court

nominee—well qualified. I questioned Mr. David Andrews of the ABA about Judge Kennedy's reputation among other ninth circuit judges and he testified that he had questioned almost all of the 27 judges on the ninth circuit, and that all of them had a "deep and abiding respect for [Judge Kennedy's] * * * sense of justice, for his ability to give everyone a fair hearing, and to make a decision on the facts before him." Mr. Andrews testified that this accolade "came from judges that enjoyed a reputation of being liberal and judges that also enjoyed a reputation of being conservative." Thus, Judge Kennedy has received the highest marks from those who have known him best during the past 12 years—his fellow judges of the ninth circuit.

As with any judicial nomination, especially one to the Supreme Court, there will be those who oppose the nomination. Such is the case with Judge Kennedy. However, his opponents' arguments, while deeply felt, are in my opinion, not supported by the nominee's judicial record or the preponderance of the evidence.

Judge Kennedy has written over 400 opinions while on the courts of appeals. These decisions demonstrate his commitment and sensitivity to civil rights. They also indicate that Judge Kennedy clearly understands the problems faced by law enforcement officials and that he is sensitive to the rights of the victims, as well as those of the accused. I am in complete agreement with a recent speech given by Judge Kennedy where he noted that, all too often in our criminal justice system, the rights of the victims are overlooked.

I was particularly moved by the testimony of Nathaniel S. Colley, Sr., a man who practices law in Sacramento and has known Judge Kennedy for many years. Mr. Colley, while stating that he doesn't agree with all of Judge Kennedy's opinions, fully supports his nomination. I fully agree with Mr. Colley's description of Judge Kennedy as a grown man but also a growing man.

Judge Kennedy has a remarkable understanding of our Constitution and its historical past and present. More importantly, I believe he is committed to safeguarding the Constitution—the greatest and most precious possession of the American people. I am convinced he believes the words of the Constitution are a lifeline that should be protected and extended to all regardless of their status or position. I believe that Judge Kennedy will work to achieve justice and equality under its provisions and the law.

I am proud to support Judge Kennedy, and hope he will be quickly confirmed by the Senate when Congress reconvenes in January.

TRIBUTE TO DR. JOHN WRIGHT

Mr. HEFLIN. Mr. President, Dr. John Wright recently announced that he will step down as president of the University of Alabama in Huntsville after 10 years of outstanding service to return to the classroom setting. While I certainly respect Dr. Wright's wishes and can understand his desire to teach, I am nevertheless, sorry to hear of his impending resignation. As President of UAH, Dr. Wright has demonstrated tremendous vision, energy, and direction that have been the driving force behind the many successes accomplished by the university during the last 10 years. Dr. Wright has brought to UAH a spirit of excellence that now extends to both the faculty and student body, alike, helping to make possible the period of incredible growth and revitalization UAH has experienced in academic offerings, in facilities, and in overall focus. During his tenure as president, Dr. Wright has helped to ensure that UAH will play a tremendous role in both the education and in the future of the citizens of Alabama and America.

I believe that each of the citizens of Huntsville, and of Alabama are deeply indebted to Dr. Wright for his extended efforts. On behalf of the people of Alabama I would like to express gratitude and admiration for a job well done. The search committee that is being formed to find a successor to Dr. Wright will be hard-pressed, indeed, to find an individual with the dedication, leadership abilities, and devotion to education that Dr. Wright has demonstrated.

My home State of Alabama is blessed to be the home of several institutions of higher education that daily challenge, enrich, and expand the minds, and make possible the discoveries that benefit Alabamians of all ages. However, even more importantly, Alabama is blessed that a few great men and women have dedicated their lives, their efforts, and their hard work to the goal of seeing that these learning institutions realize their full potential and provide the greatest gift that is available to the citizens of any State—a sound education that will guarantee a brighter future. Dr. Wright is one of these great individuals who have worked to make the educational opportunities available in Alabama the greatest in the Nation. I would like to take a moment to recount the tremendous achievements and remarkable service Dr. Wright has provided during the last 10 years that have led the university of Alabama in Huntsville to its present position as one of the most improving universities in our country.

Dr. Wright came to UAH in 1978, after serving for 4 years as vice chancellor and director of Academic Affairs for the West Virginia Board of Regents. The accomplishments he has made possible at UAH during the last few years are nothing less than remarkable. The student body has grown by more than 50 percent, from 4,000 students in 1978 to more than 6,000 students today. Dr. Wright has also worked to ensure that each of these students will be provided the finest instruction and facilities available. Since 1978, UAH has received State funding for two faculty chairs, and is working on a third. The university's annual budget has risen from $17 million in 1978 to $55 million today. Significantly, the research grants and contracts the university receives have increased by more than five times, growing from $2.5 million in 1978 to $14 million today.

During Dr. Wright's tenure, academic offerings and facilities have substantially grown and have been significantly enhanced. Bachelor's degrees are now offered in 39 disciplines, master's degrees are offered in 23 areas, and doctoral degrees are offered in 5 areas. The university has added a college of engineering, which will soon have a new building, and a college of administrative science. The U.S. Army Corps of Engineers training facility is nearly completed, and there are new facilities for the University Center, continuing education programs, and others.

Among the greatest of Dr. Wright's successes are the results of his efforts in bringing research and high technology to UAH. Dr. Wright has overseen the development of UAH into one of the Nation's leading research universities. As the home of the Center for Applied Optics, UAH is working to provide America with a poll of talented, well-trained personnel—educated above the broad range of optics—who will lead the Nation to greater discoveries in optics, thus ensuring America's position on the leading edge of this critical field. Dr. Wright has also worked to make UAH a leader in space research. Recently, the university was recognized by NASA as a center for space commercialism. Dr. Wright is now working to convince Government and education officials of the merits of a Space Grant University Act, which would encourage universities to initiate and undertake research efforts in space. This space grant concept is similar to the land grant and sea grant programs which promoted study and development of the land and sea, and from which we are now reaping significant benefits. Dr. Wright recognizes that our future lies in space, and is working to see that our Nation is prepared to meet the demands and challenges we will face in this realm in the coming years.

Mr. President, I have listed many ways in which Dr. John Wright has worked to benefit the University of Alabama in Huntsville, and, thus, the citizens of Alabama and America, but he has also contributed much to the

UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS

FIRST SESSION

VOLUME 133—PART 26

DECEMBER 21, 1987 TO DECEMBER 22, 1987

(PAGES 36717 TO 38299)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1987

be blessed by his additional presence among them.

He never fails to ask me about my father, who is now 90 years old and whom I shall see very shortly, I hope. Yet he lost his own father this year and was appreciative of the sympathy that was extended to him by the Members of this body.

So, to Charlie, God bless you. I hope you will come back and see us from time to time. I thank you, Mr. President.

The PRESIDING OFFICER. The Republican leader.

BEST WISHES TO MR. HARDY

Mr. DOLE. Mr. President, first let me thank the distinguished Senator, Senator SIMPSON, for that well-deserved tribute. I think all of us who know Mr. Hardy can attest to the statement made by Senator SIMPSON: A man of unfailing good cheer, a man of deep religious faith, and a friend of everyone in this Senate. We all wish him the best as he leaves the U.S. Senate. I am certain wherever he goes, whatever he does, he will have a positive impact on whomever he may touch in the process.

THE PRESIDENT WILL KEEP HIS PART OF THE BARGAIN

Mr. DOLE. Mr. President, on another matter let me indicate that Secretary Baker, and I think maybe the chief of staff of the White House, our former colleague, Howard Baker, will be coming to the Hill soon and we hope to have an opportunity to visit with them about the two remaining matters, the reconciliation bill and the continuing resolution, and maybe have some determination what is acceptable to the President. From that we may learn when we will be able to leave this place. Soon, I hope, and soon everyone else hopes. But I would just say this. I think the President certainly is willing to keep the bargain he made with the leadership and the Congress, Democrats and Republicans, and I think he might even be willing to bend a bit, but I do not believe we can ask the President, who in good faith has kept his end of the bargain, to now permit a number of things to crop up in either the reconciliation bill or the continuing resolution, which were not part of the agreement. The President understands the process quite well and he understands that Congress, maybe for good reasons at the last minute, since the bill is a $606-billion bill, might think the President would have to accept a few things because the bill is that large and that important and it is near Christmas and everything else. But I can tell you the President told us this morning that he is willing to live by the agreement but anything else he will veto. He did not say it in any hostile manner, any threatening manner, he just said it as a matter of fact. He made an agreement with the leadership, the Democratic and Republican leadership in the House and in the Senate, and he wants to abide by that agreement.

So I would hope we can have some information or some word from the representatives of the President in the next few minutes and that we might be able to leave here this evening at a reasonable hour. If not, hopefully before Friday of this week.

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. DECONCINI. 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. DECONCINI. Mr. President, what is the order of business?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. DECONCINI. I thank the Chair.

NOMINATION OF ANTHONY M. KENNEDY TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. DECONCINI. Mr. President, the Senate Judiciary Committee has concluded its hearings on the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the Supreme Court of the Untied States. I am announcing today my decision to vote in favor of the nomination.

I believe that the constitutional responsibility to advise and consent on the President's nominees to the Supreme Court is one of the most important responsibilities granted to a U.S. Senator. The process of selection of an individual to fill the seat of retiring Justice Lewis Powell has been divisive and bitter. While I have been critical of President Reagan earlier in this process, I believe that in the appointment of Judge Kennedy he has found a way to resolve the matter responsibly and without further rancor.

Judge Kennedy is a conservative jurist, but, as I have found by reading his opinions and talking to many, many people in my State who know him and practiced before him, he is open-minded and willing to listen to all sides of an argument.

He believes in restraint and caution and follows that course. He has strong opinions, but has no agenda to pursue on the Court.

I was unable to attend as much of the Judiciary Committee hearings as I would have liked because I was attending the conference committee meetings on the continuing resolution, and chairing one section. I have been able to read much of the transcript and talk to my staff who attended the entire hearing.

I have talked to lawyers, as I have indicated, who practiced before Judge Kennedy. I have talked to lawyers who know him and who have worked with him. I have had the personal experience of meeting Judge Kennedy at several judicial conferences and listening to him. I am impressed, Mr. President.

From my study of the record and from numerous discussions with members of the Ninth Circuit Bar, I have concluded that Judge Kennedy will serve honorably and well on the Supreme Court for years to come.

As I mentioned in my opening statement before the Judiciary Committee hearings on Judge Kennedy's nomination, of my greatest areas of concern is the area of privacy. I was encouraged to hear Judge Kennedy respond to questions from myself and other Senators, assuring us that he believed that the right of privacy is found in the Constitution. Unlike Judge Bork, who repeatedly conveyed that the right to privacy, if it existed, could not be found in the Constitution, Judge Kennedy unequivocally said the right to privacy can be found in the Constitution. Although Judge Kennedy preferred to include the right to privacy under the protection of the "liberty" language of the 5th and 14th amendments, he nevertheless was clear in his belief that the right is there and should be protected by the judiciary.

Furthermore, Judge Kennedy has stated, under oath, that he believes that the right to privacy is a fundamental right. If I might just read from the record of the hearings for a moment:

> Senator DECONCINI. [I]t appears from reading your speech, that you have concluded, without question, that there is a fundamental right to privacy. And I think the chairman had you state that, and that is your position, correct?
>
> Judge KENNEDY. Well, I have indicated that that is essentially correct. I prefer to think of the value of privacy as being protected by the clause, liberty, and maybe that is a semantic quibble, maybe it is not.
>
> Senator DECONCINI. But it is there, is that——
>
> Judge KENNEDY. Yes, sir.
>
> Senator DECONCINI. No question about it being in existence?
>
> Judge KENNEDY. Yes, sir.

And further, in response to a question from the chairman asking if Judge Kennedy had any doubt that there is a right to privacy: "It seems to me that most Americans, most lawyers, most judges, believe that liberty includes protection of a value we call privacy."

It becomes abundantly clear after reviewing the transcript of the hearings that Judge Kennedy and Judge Bork do not share the same judicial philoso-

phy as it pertains to the fundamental right of privacy. Judge Bork could not, no matter how hard he looked, find the right of privacy in the words of the Constitution. Judge Kennedy, as seen by the excerpts above, has reached an opposite conclusion.

It is central to our American tradition. It is central to the idea of the rule of law. That there is a zone of liberty, a zone of protection, a line that is drawn where the individual can tell the Government: Beyond this line you may not go.

It is hard to argue with such a simple but pure articulation of the relationship between the people of our country and our Government. Judge Kennedy, unlike the picture painted by some of his detractors, is indeed a very eloquent individual.

I am reassured by my discussion with Judge Kennedy about the fundamental right of privacy. Although we both believe it exists, we also believe it is limited. The right to privacy does not give an individual the right to commit criminal acts in private. Nor, in my view, does it sanction the killing of unborn children. A belief in the right to privacy does not equate to a belief in the right to abortion. While neither I nor others have asked Judge Kennedy his views on abortion, I do not believe that his belief in the right to privacy signals any acceptance of Roe versus Wade.

In addition to the right of privacy being found in the Constitution, Judge Kennedy was asked whether or not he believed there to be any practical significance for the ninth amendment; whether or not there was any real value to be found in the ninth amendment; and whether or not there was any purpose for the ninth amendment? Just as he found himself of a different school of thought than Judge Bork on the right of privacy, Judge Kennedy's assertions regarding the ninth amendment were much different from those espoused by Judge Bork. In summarizing the past interpretations of the Supreme Court and the ninth amendment, the nominee said that it appeared to him that the Court was treating it as something of a reserve clause, to be used in the event that the phrase "liberty" and the other broad phrases in the Constitution appear to be inadequate for the Court's decision.

Now this distinction may not appear of a great magnitude at first glance. However, as Judge Kennedy pointed out, there may come a time in the future where rights not specifically mentioned in the Constitution achieve a level of importance requiring constitutional protection. In this event, the 9th amendment would serve to provide a constitutional basis on which such a right could be protected.

During the Bork hearings it became apparent that Judge Bork had changed his mind about how far the first amendment extended. Prior to the hearings, there was evidence in Judge Bork's writings that only political speech would fall under the blanket of first amendment coverage as Judge Bork interpreted the first amendment. During the hearing Judge Bork indicated that the first amendment did indeed cover more than purely political speech, yet Judge Bork was unclear as to what speech was covered.

Judge Kennedy had no problem explaining the application of the first amendment to speech. As he stated during the recent hearings:

It (the first amendment) applies not just to political speech, although that is clearly one of its purposes, and in that respect it ensures the dialogue that is necessary for the continuance of the democratic process. But it applies, really, to all ways in which we express ourselves as persons. It applies to dance and to art and to music, and these features of our freedom are to many people as important or more important than political discussions or searching for philosophical truth, and the first amendment covers all of these forms. (TR 153)

It is apparent from the above quoted excerpt that Judge Kennedy's view of the first amendment is far more expansive than Judge Bork's.

During the Bork nomination hearings, Judge Bork communicated a belief that if one individual were to gain any rights, society or another individual would equally and inversely lose a right. Judge Kennedy, however, conveyed a different idea when discussing the right of an individual in society. Judge Kennedy said that he did not think there had to be a choice between order and liberty. But rather, "[w]ithout ordered liberty, there is no liberty at all. And one of the highest priorities of society is to protect itself against the corruption and the corrosiveness and the violence of crime, and in [his] view judges must not shrink from enforcing the laws strictly and fairly in the criminal area."

It would seem that in Judge Kennedy's view, individuals join together to protect their rights, and that unlike Judge Bork's view of our society as a "zero-sum" system, more than one interest can advance their liberties without taking liberty from other interests.

Judge Bork was clearly treading new ground when he formulated his "reasonableness" theory in the area of equal protection while speaking to the committee last summer. Prior to appearing before the committee, he had given no indication, either in his writings or in speeches, that he would apply this type of test to the various classifications of plaintiffs seeking equal protection under the 14th amendment. Once again, on this issue Judge Kennedy disagreed with the position taken by Judge Bork. Judge Kennedy informed the committee that he would follow current standards established by years of Supreme Court decisions and apply the three tiered system of review; strict scrutiny, heightened scrutiny, or rational basis, depending on what class of plaintiff is seeking redress.

Additionally, there was some question left in the minds of the committee members as to whether or not Judge Bork would apply equal protection to women. Judge Kennedy left no such doubt.

Senator DECONCINI. Would you agree, first of all, that the equal protection clause applies to all persons?

Judge KENNEDY. Yes, the amendment by its terms, of course, includes persons, and I think was very deliberately drafted in that respect.

Furthermore, while Judge Bork was uncertain whether the equal protection clause applied to women or not, Judge Kennedy was unsure that the current classification for women insured equal protection under the three tiered system. As Judge Kennedy said:

And so the law there really seems to be in a state of evolution at this point, and it is going to take more cases for us to ascertain whether or not the heightened scrutiny standard is sufficient to protect the rights of women, or whether or not the strict scrutiny standard should be adopted. (TR 170)

But you need not take my only word as to Judge Kennedy's position and the equal protection clause. The following discussion between the distinguished Senator from Pennsylvania, Senator SPECTER, and Judge Kennedy should provide the necessary confirmation.

Senator SPECTER. Is there any question in your mind about the equal protection clause applying beyond blacks to women, to aliens, to indigents, to mentally retarded?

Judge KENNEDY. No. In fact, once again, the framers could have drafted the amendment so that it applied to blacks only, but they did not. They used the word "person". (TR 229)

I am satisfied by Judge Kennedy's explanation of his membership in, and resignation from, clubs that either by rule or by practice discriminate against women and minorities. I believe that he became concerned about these practices at about the same time as did the public at large. Of course, it would have been better if he had been a leader in this regard, but he did make efforts to change things after he realized that problems existed. When he was not able to make the changes that he thought where necessary and appropriate, he resigned from the clubs. I found that his conduct in these matters was acceptable and did not evidence any prejudice or bias. If he was guilty of anything, it was a lack of heightened sensitivity. I am afraid, however, that during the time period in question, most of us suffered from the same lack of heightened sensitivity.

The one concern that I do have about Judge Kennedy is in the area of the narrowness of his rulings in civil rights cases. I was impressed by the testimony of the two witnesses representing the Hispanic Bar Association and the Mexican American Legal Defense and Education Fund. These two witnesses expressed the concerns of the Hispanic community that Judge Kennedy was not sensitive enough to the problems faced by minority citizens, Hispanics in particular. Ms. Antonia Hernandez expressed these concerns in the following manner:

> The foregoing judicial opinions rendered by Judge Kennedy and in particular the way in which he reached his results, have quite naturally caused me to conclude that Judge Kennedy—if he becomes Associate Justice Kennedy on the Supreme Court—may not be fair in adjudicating the rights of Hispanics and of other minorities. Alas, this possible unfairness could become particularly prevalent in cases not subject to compelling judicial precedent.

The decisions that Ms. Hernandez cited as being the basis for her concerns were discussed in great detail with Judge Kennedy. He explained his reasoning and the constraint that he felt required him to issue the decisions that he did. While the discrimination against Hispanic citizens in Arnada versus Van Sickle does seem to be egregious based on the facts presented to the committee, Judge Kennedy's decision seems consistent with a restrained and cautious approach to issues. His decision shows an understanding of the problems faced by Hispanics in the community and sympathetic to their attempts to remedy them. His decision certainly did not satisfy the plaintiffs in the case, but does not seem to evidence a bias against any group.

The months since Justice Powell announced his retirement from the court have been difficult for all of us. While I wish that Judge Kennedy had been the first nominee sent to us, I do believe that the process that has been followed and the decisions that have been made throughout these long months have been correct. I congratulate President Reagan for sending to the Senate a nominee so well qualified by intellect, temperament, and integrity. I urge my colleagues to confirm Judge Kennedy as quickly as possible.

Mr. President, it is of great interest to me that the critics of the process when Judge Bork was rejected were the same people—and I joined them in that case—who were proud that the process worked so well when, a couple years ago, we confirmed Justice Rehnquist to be Chief Justice of the Supreme Court. The record will show and my colleagues and the President will recall that there were some 32 Members, I believe, who voted against Justice Rehnquist. Yet, he prevailed, and he is a fine jurist. There was opposition in my own State, where Justice Rehnquist had lived for a number of years, but I felt very strongly that Justice Rehnquist was qualified for that position.

My point is that the system worked then and it is working now with Judge Kennedy. It worked when the Senate turned down Judge Bork.

I am pleased to suggest to my colleagues that they support, after reviewing the hearing record and the decisions of Judge Kennedy, confirmation of the nominee early next year.

I suggest the absence of a quorum.

Mr. STENNIS. Mr. President, will the Senator yield to me?

Mr. DeCONCINI. I will be glad to yield to the distinguished chairman of the Appropriations Committee, Senator STENNIS.

Mr. STENNIS. I thank the Senator for the service he has rendered. I am impressed with what he has said. I have been interested and concerned to a degree, although I heard nothing contrary to good things about this gentleman. I am especially glad to have the Senator's point of view. I know the Senator thought it through. I have watched the Senator, and I am proud that he reached that conclusion. I am satisfied with it to the extent that I am of the same view when it comes to voting.

I thank the Senator again.

Mr. DeCONCINI. Mr. President, I thank the distinguished chairman of the Appropriations Committee, Senator STENNIS. Let me say that his careful review and scrutiny of the debate on this floor has always impressed me, I appreciate his awareness of all the things that he is on top of, whether they are defense appropriations matters or the nominations to the Supreme Court.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from New York.

ATV'S AND THE CONSUMER PRODUCT SAFETY COMMISSION

Mr. D'AMATO. Mr. President, I rise this evening to comment on the U.S. Consumer Product Safety Commission. I focus on the Commission's December 16 proposed settlement of its imminent hazard complaint against the manufacturers of all-terrain vehicles known as ATV's.

Mr. President, their proposal is a Christmas present to the Japanese-based ATV industry, but it is a disaster for the American public, especially our children. ATV's have caused about 900 deaths and 330,000 injuries nationwide since 1982. At least 59 deaths have occurred in my State, in the State of New York. Half of the injuries and deaths are to children under the age of 16. ATV injuries and deaths cost the public more than $1 billion each year.

Over a year ago, Mr. President, the Consumer Product Safety Commission voted to pursue an enforcement action against the industry. Chairman Scanlon dissented from the vote. The matter was referred to the Department of Justice on February 2, 1987 and on December 11, 1987 the Department of Justice, in a long overdue decision, formally agreed to file a complaint in Federal district court seeking all the relief authorized by the Commission last December, including the refunds to consumers who purchased adult-sized ATV's for children as well as consumer refunds for all three-wheeled ATV's.

The December 16 proposed settlement, Mr. President, falls far short of the complaint and does not even match what the only American manufacturer has offered. Most importantly, because it deletes the requirement for consumer refunds, the settlement provides no effective means for keeping children from riding adult-sized ATV's—millions of which are in our communities. This is rather outrageous when the only major American ATV manufacturer has already agreed to refunds. We have an American manufacturer, Polaris of Minnesota, who has agreed to take responsible actions, while the Japanese companies, whose ATV's constitute the great bulk of products in the United States, are unwilling to do this.

Mr. President, the proposed settlement appears to be a carefully contrived attempt to limit manufacturers' products liability exposure while settling the case as cheaply as possible. In other words, CPSC has done the bidding and the work of the ATV manufacturers. Let me tell you why. The proposed settlement contains a so-called verification form that consumers must sign at the point of purchase and that manufacturers will try to use as a defense in products liability suits.

This would put the Federal Government's stamp of approval on what amounts to a release or consent covering nearly every conceivable products liability scenario associated with ATV accidents. For example, according to this settlement consumers must agree in writing to never drive at "excessive" speeds—whatever they are. The verification form doesn't explain what an "excessive" speed is. Imagine that. Our Government is saying that once the consumer signs this consent, this waiver, that he promises that he will never use this vehicle at "excessive" speeds and that he understands what "excessive" speeds are. Unfortunately, a driver finds out what the "excessive" speed is only after he has lost control and the vehicle has crashed. Obviously, if an accident occurs, the manufacturer will try to prove that the vehicle

UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS

SECOND SESSION

VOLUME 134—PART 1

JANUARY 25, 1988 TO FEBRUARY 16, 1988

(PAGES 3 TO 1466)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1988

tee work can be done without interruption by rollcalls and quorum calls.

UNANIMOUS-CONSENT AGREEMENT—NOMINATION OF ANTHONY M. KENNEDY TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that, provided the nomination and report have been filed by the close of business on Monday, February 1, the Senate proceed to executive session on Wednesday morning at 9:30 a.m.; that there be 1 hour of debate, to be equally divided and controlled in accordance with the usual form on the nomination of Mr. Kennedy to be Associate Justice of the Supreme Court, the time to be controlled by Mr. BIDEN, and Mr. THURMOND; that the vote on the nomination occur at 10:30 a.m.; provided further, that there be no time for debate on the motion to reconsider and that, upon the disposition of the nomination, the Senate return to legislative session without further action, motion, or debate.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent it be in order to order the yeas and nays at this time to the nomination of Mr. Kennedy.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the nomination as if in executive session.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

MR. BYRD. Mr. President, I thank Mr. ARMSTRONG, who is the acting Republican leader at the moment.

UNANIMOUS-CONSENT AGREEMENT—ILO CONVENTION (NO. 144) AND ILO CONVENTION (NO. 147)

Mr. BYRD. Mr. President, I have a further request which I believe has been cleared all around.

As in executive session, I ask unanimous consent that at such time as the Senate considers Executive Calender No. 6, the ILO Convention (No. 144) concerning tripartite consultations to promote the implementation of international labor standards, and Executive Calendar No. 7, the ILO Convention (No. 147) concerning the minimum standards in merchant ships, there will be 30 minutes, equally divided between the chairman and ranking member of the Committee on Foreign Relations, or their designees, on each of the two conventions, and that no amendments or motions to recommit be in order; provided further, that, after all time for debate has been used or yielded back on each of the two conventions, the Senate proceed to vote back to back on the conventions without any intervening action, and that the call for the regular order be automatic at the expiration of 15 minutes on both of those rollcalls.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving the right to object, if the leader will yield, could we know what your plan is on these? Do you intend to call these up on Monday?

Mr. BYRD. Yes; I intend to go to these on Monday.

Mr. ARMSTRONG. Can you give us an idea of when the vote would occur?

Mr. BYRD. I want to talk to Mr. MOYNIHAN, who is handling the matters on this side of the aisle. I will talk to him on the next rollcall, after which I will be in a position to respond to the Senator's question.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. I am happy to yield.

Mr. HATCH. I think I will be handling it on this side of the aisle. If that is so, we would like to have the votes so they will be over by 2:30.

Mr. BYRD. All right. Mr. HATCH would like to see the votes completed by no later than 2:30, and he is managing the two conventions on that side of the aisle. When Mr. MOYNIHAN comes to the floor for the next rollcall vote—and there will be at least one more rollcall vote—I will get an answer to the Senator's question.

Mr. ARMSTRONG. I apologize to the leader. My attention was distracted. It is likely that the vote would occur between 2 and 3:30?

Mr. BYRD. Well, I hope the vote would occur earlier than that. That would accommodate Mr. HATCH.

Mr. ARMSTRONG. Earlier than 2 o'clock?

Mr. BYRD. Earlier, I hope.

Mr. ARMSTRONG. Mr. President, it is a matter of indifference to me, but there is a person on our side of the aisle who expressed great interest that this occur sometime after 2 and I understand there are others who want it to occur before 3:30. As far as I am concerned, September would be all right.

Let me leave it at this, if I may, to just express to the leader—I do not intend to object—that if it is possible for the leader to work it out so the vote occurs between 2 and 3:30, it would be convenient for Members on this side.

Mr. BYRD. I will certainly make every effort to do that if Mr. MOYNIHAN, the manager on this side, can accommodate himself to that. This does not mean there will not be rollcall votes before 2 o'clock on Monday.

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

Mr. BYRD. Mr. President, I understand the Senators are ready now to resume consideration of the pending business. I yield the floor.

CIVIL RIGHTS RESTORATION ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 1396

(Purpose: To provide a clarification for otherwise qualified individuals with handicaps in the employment context)

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] for himself and Mr. HARKIN, proposes an amendment numbered 1396.

At the end of the bill insert the following:

CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

SEC. . (a) Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

"(C) for the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.".

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand under the UC agreement there was time set aside for the consideration of a Humphrey amendment. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. As I understand the situation at the present time, that there has been an amendment which has just been read which is a Harkin-Humphrey amendment, and I would ask consent that it be in order for the Senate to consider that measure at this particular time.

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

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank the Senator from Iowa and the floor managers and others, the staff involved, for working diligently to come to compromise language and likewise I thank my colleagues not involved for their patience.

Mr. President, I would like to address several questions to the Senator from Iowa, relative to his understanding of this amendment. Is the Senator prepared? Do I have the attention of the Senator from Iowa?

Is it your understanding that this amendment is designed to address an issue comparable to the one faced by

Constitution and to review and approve its total revision.

The President of the Republic or one-third of the Representatives to the National Assembly can initiate a partial reform.

Half of the total number of Representatives to the National Assembly plus one are necessary to initiate a total reform.

Art. 192 A proposal for partial reform must specify the article or articles to be reformed with a statement of the reasons for the modification. The proposal must be sent to a special commission which shall render an opinion within no more than 60 days; the initiative shall then follow the same process as for the creation of a law.

A proposal for partial reform must be discussed in two sessions of the National Assembly.

Art. 193 A proposal for total reform shall follow the same process as in the previous article, except that upon its approval, the National Assembly shall establish a time period for holding elections for a Constituent National Assembly. The National Assembly shall retain jurisdiction until the installation of the new Constituent National Assembly.

Until a new Constitution has been approved by the Constituent National Assembly, this Constitution shall remain in effect.

Art. 194 Approval of a partial reform shall require a favorable vote by sixty percent of the Representatives. Two-thirds of the total number of Representatives are required to approve a total revision. The President of the Republic must promulgate the partial amendment, which is not subject to veto.

Art. 195 The reform of constitutional laws shall follow the procedure established for partial reform of the Constitution, with the exception of the requirement of discussion in two legislative sessions.

TITLE XI.—FINAL AND TRANSITIONAL PROVISIONS

Art. 196 This Constitution shall govern from the time of its publication in La Gaceta, the official daily legal publication, and shall annul the Fundamental Statute of the Republic, the Statute of Rights and Guarantees of Nicaraguans and all other legal provisions inconsistent with it.

Art. 197 This Constitution shall be widely disseminated in the official language of the country. It shall also be disseminated in the languages of the Communities of the Atlantic Coast.

Art. 198 All aspects of the existing legal order that do not contradict this Constitution shall remain in effect, until such time as they may be modified.

Art. 199 The Special Courts shall continue to function until such time as they come under the jurisdiction of the Judicial Branch. The appointment of their members and their procedures shall be determined by the laws that established them.

Furthermore, the Common Courts shall continue to function in their present form, until a system with popular representation is established. This principle shall be implemented gradually in accord with the circumstances.

Art. 200 The current political administrative division shall be preserved until the law governing it is promulgated.

Art. 201 The President and Vice President of the Republic and the Representatives to the National Assembly, elected November 4, 1984, shall exercise their functions during the term that ends January 10 and 9, 1991, respectively.

The members of the Supreme Court of Justice and the Supreme Electoral Council and other authorities and officials of the diverse branches of government shall continue to exercise their functions until such time as their successors take office in accordance with the Constitution.

Art. 202 Four official copies of this Constitution shall be signed by the President and Representatives to the National Assembly and by the President of the Republic. These copies shall be kept in the offices of the Presidency of the National Assembly, the Presidency of the Republic, the Presidency of the Supreme Court of Justice and the Presidency of the Supreme Electoral Council. Each one shall have the force of the authentic text of the Political Constitution of Nicaragua. The President of the Republic shall cause it to be published in La Gaceta, the official daily publication.

Mr. SANFORD. Thank you, Mr. President.

Mr. President, 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. REID. 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 JUDGE ANTHONY M. KENNEDY

Mr. REID. Mr. President, I rise today to speak in favor of the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court. Judge Kennedy has distinguished himself throughout his educational and professional life. He excelled as an undergraduate student at Stanford University, and, in his senior year, attended the London School of Economics. Judge Kennedy went on to Harvard Law School and then into the private practice of law. In 1975, President Ford appointed Judge Kennedy to the Federal Appeals Court for the Ninth Circuit where he continues to serve with distinction. I take a special interest in the ninth circuity as its jurisdiction encompasses the great State of Nevada.

Throughout his life, Anthony Kennedy has demonstrated a consistent pattern of measured reason and devotion to scholarship. Indeed, the more I have learned about Anthony Kennedy, the more I have become convinced that he is a living example of what we call judicial temperament. I admire this quality, and I respect Judge Kennedy's flexible but cautious manner, his conservative approach to the law, his advocacy of judicial restraint, and his deference to well-founded legal precedent.

When the American Bar Association's judicial evaluations committee unanimously gave its top rating to Judge Kennedy, the committee stated that its "investigations reveal that Judge Kennedy's integrity is beyond reproach, [and] that he enjoys justifiably a reputation for sound intellect and diligence in his judicial work." Such high praise is impressive.

Mr. President, I have just spoken about some of Judge Kennedy's qualifications, but I want to take a few minutes this day to talk about one qualification in particular, and that is Judge Kennedy's role as a teacher.

Jim Hardesty, a prominent Reno attorney and a man I have known for many years, knew Judge Kennedy personally. For over 22 years, Judge Kennedy taught constitutional law at McGeorge Law School, University of the Pacific, and Hardesty had been a student of Judge Kennedy. Hardesty told me what an outstanding teacher Judge Kennedy was; and that in all the years he had been in school, he had never had a teacher as good as Anthony Kennedy.

Indeed, many former students of Judge Kennedy who are now members of the Nevada legal community contacted me to praise Judge Kennedy and his teaching abilities. His former students spoke in glowing terms of the great contribution he made to their education and of the profound impact he had on their development as attorneys.

Among the people who spoke highly of Judge Kennedy are such prominent members of the Nevada legal community as: U.S. Attorney Donald Calvin Hill, Nye County District Attorney Philip Dunleavy, U.S. Attorney William Maddox, and Clark County Deputy District Attorney Tom Moreo.

Mr. President, other than my wife and I, I think the people who have had the most influence upon the lives of my five children have been their teachers. So when I hear somebody tell me that a person is an excellent teacher, I think of my children and what an impact teachers have had on their lives. In fact, I can still look back at the teachers who have been important in my life.

I know that all the qualifications I outlined initially in my remarks today to this body are of primary importance. It is important that someone who is going to be a Justice of the U.S. Supreme Court is one who is qualified academically, and certainly Judge Kennedy is.

It is important that someone who will serve on the Supreme Court is a person of temperament, judicial temperament, and certainly Judge Kennedy is.

These are qualities that we need on the bench. But, in addition, I am extremely impressed by the fact that person after person told me that Judge Kennedy is an exemplary teacher. I think that says a lot for an individual.

After all, teaching is part of what the Supreme Court is about. Justices write opinions, in a collegial atmosphere, and those opinions are taken into the courtrooms and classrooms of this country for years to come. These opinions serve to teach all of us what the law is.

Mr. President, I look forward to next Wednesday: casting a vote for Judge Kennedy to be an Associate Justice of the U.S. Supreme Court will be a great pleasure.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I ask unanimous consent that the 10-minute limitation not apply to me in this instance with the understanding that if another Senator wishes to speak I will yield the floor for that purpose in which case I ask unanimous consent also that there be no interruption of my speech in the RECORD.

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

UNITED STATES SENATE

RICHARD BREVARD RUSSELL (1897-1971)

Mr. BYRD. Mr. President, in my continuing series of addresses on the history of the United States, I have focused from time to time on individual senators who have left their mark on this institution. One such senator is Richard Brevard Russell, Jr., of Georgia. In 1972, I initiated legislation that provided for naming the original Senate office building in his honor. Today, the thousands of people who work on Capitol Hill know his name, but only a few know his legacy.

In preparing these remarks, I have had the good fortune to be ably assisted by Dr. Gilbert Fite. Dr. Fite served from 1976 to 1986 as the first Richard B. Russell professor of American history at the University of Georgia. From 1945 to 1971, he was a member of the history faculty at the University of Oklahoma, and, from 1971 to 1976, he served as president of Eastern Illinois University. Dr. Fite's research interests are reflected in the professional associations of which he has been president. They include the Western History Association, the Southern Historical Association, and the Agricultural History Society. This distinguished scholar is currently completing a full scale biography of Senator Russell.

Richard B. Russell was one of the nation's leading statesmen in twentieth century America. A true son of the South, he served in the United States Senate from January 12, 1933, until his death on January 21, 1971, some thirty-eight years later. During that period, he worked with six presidents, and, from the 1940's when he emerged as a leader in the Senate, he played a major role in national policy-making. His career spanned epochal events, including the Great Depression, World War II, the introduction of nuclear power, the Korean and Vietnam wars, the battle for civil rights, expansion of federal powers and responsibilities and a host of other major developments. His mark can be found on most of the great questions that faced the country during his terms in Washington.

In 1963, a reporter for *Newsweek* magazine wrote that Senator Russell is "a courtly, soft-spoken, cultural patrician, whose aides and associates treat him with deferential awe. Modest, even shy, in manner, devastatingly skilled in debate, he has a brilliant mind, encyclopedic learning, unrivaled access to pressure points of senatorial power and a gift for using them. He is a senator's senator, the head of the Senate establishment, the most influential member of the United States Senate." Who was this man who had won such respect and power? What manner of man was he?

Russell was born in the small town of Winder, Georgia, some forty miles northeast of Atlanta, on November 2, 1897. He was the fourth child and first son of thirteen living children of Judge Richard B. Russell and Ina Dillard Russell. He was born into a distinguished and well educated family whose roots went back to colonial times. His Russell ancestors had lived in South Carolina and Georgia for several generations and were successful planters and businessmen. Russell's grandmother, Rebecca Harriette Brumby, had descended from the Brumbys and the Brevards, two prominent South Carolina and North Carolina families. On both sides, it was a family of modest wealth and prestige.

Richard Brevard Russell, the senator's father, was born at Marietta, Georgia in 1859. He attended the University of Georgia, receiving a law degree in 1880. He practiced law in Athens, was elected to the Georgia house of representatives in 1882 where he served for six years, and, in 1888, he was elected solicitor general of the western circuits of Georgia. He held that position until January 1, 1899, when he became judge of the superior court of the western judicial circuit.

Judge Russell was an intensely ambitious man. In 1904, he made an unsuccessful race for chief justice of the Georgia supreme court, and, two years later, he entered the campaign for governor against the prominent Hoke Smith, a contest in which he was decisively defeated. In 1911, Russell failed again in a race for the governorship, and had no better success when he ran for Congress in 1916. In 1922, however, he won a campaign for chief justice of the Georgia supreme court, a position that he held until his death in 1938.

Young Richard B. Russell, Jr., then, grew up in a large family that was prominent and widely known throughout the state. Also, it was a family that expected the children to achieve. Judge Russell believed deeply in at least three things—education, hard work, and personal ambition. Moreover, he had special ambitions for his first son and namesake. Both Judge and Mrs. Russell planned for, and expected, their eldest son to become a leader in some field, preferably public service.

To help achieve that goal, the Russells sent young Dick to Gordon Military Institute at Barnesville, Georgia. This was considered the best secondary school in the state, and one of the top such institutions in the South. It attracted the sons from many of Georgia's leading families, and Judge Russell believed that the contacts Dick made there among his fellow students would be helpful later in a political career. So, in September 1911, young Dick, at age thirteen, was off to Gordon.

Although he possessed high native intelligence, Dick did not take his school work very seriously. He was much more attracted to the social life, both on and off campus. Despite intense urgings from his father and mother to study hard, he so neglected his studies that he nearly flunked out of school. Judge Russell, hoping to stimulate his son by appealing to family pride, once wrote: "you carry my name, and I want you to carry it higher than I have done or can do in my few remaining years."[1] Such fatherly urgings, however, were largely in vain.

At the end of his sophomore year, Dick had passed all of his courses except Latin. Believing that a different environment might help his son, Judge Russell decided to send Dick to the Seventh District A&M School near Marietta. There, the curriculum was less rigorous and students had to work for part of their expenses. Dick's father believed that a work schedule might provide the discipline needed to do better academic work. During that year, Dick did improve in his studies, and, after making up his failed Latin course at a University of Georgia summer session, he returned to Gordon and graduated with his class in May 1915. It was a close call, howev-

Footnotes at end of article.

provided in section 6103(f) of the Internal Revenue Code of 1986, nothing".

Mr. GLENN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I congratulate Mr. GLENN and Mr. ROTH for their management of this measure. I also want to thank and compliment the staffs on the inspector general bill, S. 908. It will improve the Government's ability to fight waste, fraud, and mismanagement, and it will assist Congress in its oversight duties. Their efforts in working out the last few problems enabled the Senate to complete the bill with but one rollcall vote on passage.

Mr. President, there will be no more rollcall votes today.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business, not to extend beyond 30 minutes, and Senators may speak therein for not to exceed 5 minutes each.

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

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

SENATOR DANIEL K. INOUYE, OF HAWAII

Mr. METZENBAUM. Mr. President, I rise to address myself to the very favorable conduct of one of our colleagues in recent days. I do not think there is any Member of this body who is more respected than is the distinguished senior Senator from Hawaii, Senator INOUYE.

Mr. President, the Senator about whom I speak, Senator INOUYE, was successful in offering a proposal to provide $8 million earmarked in the continuing resolution for the construction of schools in France for Jewish refugees from North Africa. His intention was excellent. He had a concern about these refugees and their opportunity to obtain adequate education.

But in retrospect, I and others arrived at the conclusion that providing funds for a parochial institution in France, no matter how meritorious, had other implications to it.

So he came to the floor of the U.S. Senate and said:

> I have made an error in judgment. I fear that I have embarrassed my colleagues. I intend to correct that error.

Mr. President, I must say to you that that takes courage. It takes courage to come out on the floor of the Senate and say, "I made a mistake. It was an error in judgment."

But this Senator, for whom all of us have such great respect, and who served on the Irangate inquiry and previously served on the inquiry concerning President Nixon, who distinguished himself as the chairman of the earlier hearing on a prominent Senator in this body, I am sure tortured himself before he came to the conclusion that he would come to the floor on this issue and admit an error.

I think that bespeaks so much about the kind of person that he is. I think it indicates the integrity that he has. I think it indicates the quality of the Senator and the human being that he is.

I just wanted to stand on this floor and say that I am very proud to serve in the U.S. Senate with Senator DANNY INOUYE. His act was a courageous one. His original intention was well-motivated, well-intentioned. I think in retrospect, he agreed, I agreed and others concluded, that perhaps that well-intentioned action should not have occurred. So he had the courage to come forward and indicate he will propose to undo the original error. I will support him in that effort. I commend him for the courage of his conviction and for the leadership he has shown in this Senate over a period of so many years. He makes us all stand just a little bit taller by reason of his willingness to admit an error and come forth and say so to this body. I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

SENATOR DANIEL K. INOUYE

Mr. EXON. Mr. President, I wish to associate myself with the excellent remarks just presented by my colleague from Ohio. He said it so well that I will not attempt to add thereto, except to congratulate him. I want it shown in the RECORD very clearly that everything he said has been said better than this Senator could have said it, and which should be said about our distinguished colleague from Hawaii.

Mr. METZENBAUM. I thank the Senator from Nebraska.

THE NOMINATION OF JUDGE ANTHONY KENNEDY

Mr. EXON. Mr. President, I rise to announce my intention to vote for the confirmation of Judge Anthony Kennedy to the U.S. Supreme Court.

After reviewing the record, I am impressed with Judge Kennedy's conservative legal philosophy and commitment to judicial restraint. Judge Kennedy's calm temperament, careful explanation of the law, and soft-spoken nature seem especially becoming of a member of the highest court of the land. He has served on the circuit courts of appeals for years and, refreshingly, is a nominee from well outside the Washington, DC, area and its political circles. Judge Kennedy's opinions are carefully crafted and well reasoned. He brings to the Court a keen intellect and a willingness to consider each case which comes before him on its own merits and not through the prism of a predetermined or promised legal agenda.

I expect Judge Kennedy to receive overwhelming support in the U.S. Senate. He received the highest recommendation of the American Bar Association and the unanimous endorsement of the Senate Judiciary Committee. His professional career is impeccable and he has shown a continuing commitment to the law. Certainly, a unanimous endorsement is even possible. In the steps leading up to this point, the U.S. Senate and the Nation endured a divisive and bitterly fought battle. I submit, Mr. President, the Nation is well served when there is a high degree of consensus around a nomination of this magnitude. Justices O'Connor and Scalia both enjoyed the unanimous support of this body, and their decisions have enjoyed the confidence of the American people. To those who may wish to open old wounds and refight old battles, I urge them to not neglect the fact that in spite of this long and difficult road, the President has finally nominated an individual who has won the broad support of the Nation and this body. This unity and confidence makes our democratic institutions strong.

A lifetime appointment to the U.S. Supreme Court is a rare and distinct honor. It carries with it an awsome responsibility. I expect to Judge Kennedy's appointment to be a watershed in American jurisprudence. He assumes the position of the Justice Powell, a Justice who held the balance of power on a number of key cases. In this regard, the fact that he is regarded as a conservative jurist is a strong factor in his favor. Justice Kennedy is a thoughtful jurist who will not take his responsibilities lightly.

Mr. President, I look forward to joining with my colleagues to vote to confirm Judge Kennedy, the President's nominee to the U.S. Supreme Court.

THEIR LITTLE TOWN

Mr. EXON. Mr. President, I rise on one further matter. There was an excellent article in the National Journal magazine, the last issue, with regard to the calamity that is facing rural America today. I talk about rural America, and we think about agriculture, but there is also a great number of truly independent entrepreneurs out there who are suffering right